

THE TURANGI TOWNSHIP REMEDIES REPORT

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TURANGI TOWNSHIP
REMEDIES REPORT

WAI 84

WAITANGI TRIBUNAL REPORT 1998



The cover design by Cliff Whiting invokes the signing
of the Treaty of Waitangi and the consequent interwoven development
of Maori and Pakeha history in New Zealand as it continuously
unfolds in a pattern not yet completely known

A Waitangi Tribunal report
ISBN 1-86956-236-4

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Produced by the Waitangi Tribunal
Published by GP Publications, Wellington, New Zealand
Printed by GP Print, Wellington, New Zealand
Set in Adobe Minion Multiple Master

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LIST OF ABBREVIATIONS

app	appendix
CA	Court of Appeal
ch	chapter
CJ	chief justice (when used after a surname)
CT	certificate of title
doc	document
ed	edition
fig	figure
ha	hectare
HC	High Court
J	justice (when used after a surname)
LINZ	Land Information New Zealand
m	metre
MOW	Ministry of Works
NZFLR	<i>New Zealand Family Law Reports</i>
NZLR	<i>New Zealand Law Reports</i>
p, pp	page, pages
para	paragraph
P	president of the Court of Appeal (when used after a surname)
PC	Privy Council
s	section (of an Act)
sec	section (of a book, this report, etc)
so	Survey Office
SOE	State-owned enterprise
TOWSE	Treaty of Waitangi (State Enterprises) Act 1988
VNZ	Valuation New Zealand
vol	volume
Wai	Waitangi Tribunal claim



The Waitangi Tribunal
Wellington

The Honourable Tau Henare
Minister of Maori Affairs
Parliament Buildings
Wellington

Te Minita Maori

Tena koe, te Minita mo nga take Maori

This is the Tribunal's report on the remedies sought by Ngati Turangitukua in respect of the various Treaty breaches by the Crown in connection with the Turangi township. In our *Turangi Township Report 1995*, we proposed that, in the interests of facilitating an early settlement on the question of remedies, the claimants and the Crown should enter into direct negotiation. We reserved leave to the claimants, should the parties be unable to reach agreement on a settlement, to apply to the Tribunal to hear the parties on the question of remedies and the making of appropriate recommendations.

In the event, the parties were not able to agree on a mutually acceptable settlement. Accordingly, the Tribunal has heard the claimants and the Crown on the remedies sought by Ngati Turangitukua. These included the Tribunal making binding recommendations in respect of the land in Turangi that the Crown transferred to State enterprises. For reasons given in our report, the Tribunal has made binding recommendations for the return of some only of this land. In addition, it has recommended that certain Crown-owned land be returned and that the Crown make appropriate monetary compensation to the claimants.

Heoi ano

CHAPTER 1

INTRODUCTION

1.1 *THE TURANGI TOWNSHIP REPORT 1995*

In September 1995, the Tribunal presented to the Minister of Maori Affairs its report on the Turangi township claim. The claim was brought by the Ngati Turangitukua people, a hapu of Ngati Tuwharetoa.

The claim concerned the taking by the Crown of an extensive area of ancestral land of Ngati Turangitukua under the compulsory acquisition provisions of the Public Works Act 1928 and the Turangi Township Act 1964. By late 1963, it had become clear that the Government intended to proceed with the Tongariro power project. Four possible sites were identified by Crown officials for a construction town to house the many workers who were to be involved in the project. The Crown owned two sites that would have been suitable. In particular, either a permanent or a temporary township could have been built at Turangi East (where there was plenty of Crown land available) or a temporary township at Rangipo. The Crown also considered two other sites owned by Maori. One, at Lake Rotoaira, was the least favoured site of the four. The fourth site was papakainga land of Ngati Turangitukua at Turangi West. This, like the Crown's Turangi East site, was considered suitable for either a temporary or a permanent township. The Crown decided it would prefer to build a permanent township and elected to take the Ngati Turangitukua land under the Public Works Act 1928 in preference to building on its own land, which was nearby.

The Crown approached the Ngati Turangitukua people in April 1964 to seek their approval for the Crown's establishment of a township on their land. On the basis of numerous assurances and undertakings given to them by Crown officials, the people present approved in principle the construction of the proposed township at Turangi. Subsequently, this approval was undermined and negated by the failure of the Crown, in whole or in part, to honour many of these undertakings on which the people had relied in approving in principle the Crown proposal.

Of critical concern to the Turangitukua people was that the Crown compulsorily acquired the freehold of some 1665 acres of the claimants' ancestral land, despite having promised to take no more than 800 to 1000 acres freehold. The Crown, in effect, took between two-thirds and twice as much land as it had assured the owners it would take. In addition, repeated assurances by Crown officials that the land required for industrial purposes (papakainga land of great significance to Ngati Turangitukua) would be leased and returned after 10 to 12 years were not honoured by

the Crown. The freehold of some 186 acres was compulsorily taken and the land occupied for the Industrial Area. It has never been returned to Ngati Turangitukua.

Other failures by the Crown to honour undertakings to Ngati Turangitukua, in whole or in part, included the failure in numerous instances to protect the wahi tapu of the people (sacred taonga were desecrated or destroyed) and the failure to ensure that waterways and fisheries were not degraded and that increased flooding did not occur. Other major grievances included the Crown's failure to respect the mana of Ngati Turangitukua and to preserve an economic base for them.

The result was that the Crown acted inconsistently with the principles of the Treaty of Waitangi, and the Tribunal found that the claimants have been prejudicially affected by the various Crown policies, acts, and omissions.

The Tribunal also found that the provisions of the Public Works Act 1928 and the Turangi Township Act 1964 relied on by the Crown in entering upon and taking the claimants' land were fundamentally inconsistent with the basic guarantee in article 2 of the Treaty of Waitangi.

In our report, the *Turangi Township Report 1995*, we gave an overview of the claim.¹ We concluded that the claimants were entitled to be compensated for the losses and injury they have suffered. We noted that the return of land would no doubt be a central element in such compensation. In addition, we recorded that, on 24 August 1994, the claimants gave notice of their application for the resumption under the Treaty of Waitangi Act 1975 of land covered by the claim and vested in or transferred to a State-owned enterprise under the State-Owned Enterprises Act 1986. In the report, we set out 13 findings of Treaty breaches by the Crown.² These are considered in chapter 3 of this report.

The only recommendations made in our 1995 report related to amendments we proposed should be made to the Public Works Act 1981 to better secure the protection of Maori Treaty rights in relation to the proposed acquisition of their land.

1.2 A NEGOTIATED SETTLEMENT

In the final section of our overview in chapter 21, we noted that, prior to the final submissions of the parties in October 1994, the Tribunal advised them that the claimants' application for the resumption of land vested in State-owned enterprises in the claim area and the question of remedies generally would need to await the Tribunal's report.³ Accordingly, no submissions were made by counsel on the question of remedies.

In the interest of facilitating an early settlement of remedies, we proposed that it would be appropriate for the claimants and the Crown to enter into direct negotiations. These would need to encompass outstanding ancillary claims (brought

1. Waitangi Tribunal, *Turangi Township Report 1995*, Wellington, Brooker's Ltd, 1995, ch 21

2. Ibid, secs 22.2.1–22.2.13

3. Ibid, sec 21.8

by individuals), as well as the wider claims, and should include the application in respect of land vested in State-owned enterprises in the area.

In conclusion, we noted that, if at any stage the parties were unable to reach agreement on the whole or any part of the matters in issue, the Tribunal would be amenable, on the application of the claimants, to set a date for hearing the parties on the question of remedies and for making appropriate recommendations.

Ngati Turangitukua and the Crown agreed to enter into negotiations. These took place during 1995 and 1996. By July 1996, however, they had come to a standstill.

1.3 NEGOTIATIONS BREAK DOWN

On 16 July 1996, claimant counsel advised the Tribunal that the claimants' discussions with the Crown had not led to a settlement. The Tribunal was advised that the claimants had formally withdrawn from negotiations. They sought a reconvening of the Tribunal for a remedies hearing. Counsel indicated that their application in respect of remedies would include the return of land bearing section 27B memorials on State-owned enterprise land.

These memorials relate to Crown land transferred to or vested in a State enterprise pursuant to the State-Owned Enterprises Act 1986. Section 27A of that Act provides that the district land registrar is to note on the certificate of title for any such land the words:

Subject to section 27B of the State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of any such recommendation).

Section 27B provides for the resumption by the Crown of land that has been transferred to or vested in a State enterprise under the 1986 Act and that the Waitangi Tribunal has, under sections 6(3) and 8A(2)(a) of the Treaty of Waitangi Act 1975, recommended should be returned to Maori ownership, where such recommendation has been confirmed under section 8B of the 1975 Act.

After hearing the parties on 2 August 1996, the Tribunal directed the registrar to arrange a suitable date for hearing the remedies application at Hirangi Marae in Turangi.

In September 1996, the Crown submitted that a higher standard of proof may be required if a mandatory recommendation is sought under section 8A of the Treaty of Waitangi Act in respect of Crown land transferred to or vested in a State enterprise. It asked for a ruling on the question by the Tribunal.

1.4 TRIBUNAL DECISION ON STANDARD OF PROOF

On 27 and 28 February 1997, the Tribunal heard detailed submissions by counsel for the Crown and claimants. It also had before it a written submission by counsel assisting the Tribunal, John Fogarty QC, which was by agreement received by the Tribunal and taken into account along with the submissions of counsel for the parties.

The Tribunal delivered its decision on the issues raised by the Crown on 25 March 1995.⁴ In essence, as we noted in the decision:

This decision concerns the power of the Waitangi Tribunal to make binding recommendations in terms of the Treaty of Waitangi Act 1975 (1975 Act) in respect of land transferred to or vested in a State Enterprise. This power is contained in ss 8A and 8B of the 1975 Act which along with other provisions was made part of the 1975 Act by s 4 of the Treaty of Waitangi (State Enterprises) Act 1988. In short, the Crown has submitted that the Tribunal is legally obliged to adopt a higher standard of proof and stricter procedures when exercising its power to make binding recommendations than it is required to adopt when deciding to make non-binding recommendations.

The Crown contends that the requisite standard of proof is at the higher end of the civil standard of proof, namely the balance of probabilities – ie, a reasonably high degree of probability is required. The Crown says that the material facts relied upon as a basis for a binding recommendation must be established to this standard.⁵

We will be referring later to various matters raised by counsel and considered in our decision. At this point, it is convenient to state the conclusions we reached:

There is a danger in dealing with the lengthy and detailed submissions of the Crown of losing sight of the wood for the trees. Little reference was made by Crown counsel to the Tribunal's *Turangi Township Report* or to the seriousness of the Crown's Treaty breaches. It is apparent that the Crown regards with some concern the possibility that the Tribunal might, when it has heard the parties, decide to make a binding recommendation. It is also apparent to the Tribunal, that the claimants entertain very real concern that the agreement between Maori and the Crown following the *Lands* decision [*New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA)], and the statutory provisions which were intended to give effect to it, may be diluted as a result of the Crown's attempt to assimilate to some degree the legal processes of the Tribunal with the judicial processes of a court of law, which plainly it is not.

The Tribunal's mandate, if after its inquiry into a claim is completed, it finds well-founded breaches by the Crown of its Treaty obligations, is to make appropriate recommendations under s 6(3). In considering what recommendations it should make in any given case, the Tribunal should have regard to all relevant circumstances. These will include the nature, extent and effect of the Treaty breaches which it finds to be well-founded, and additional evidence and submissions received during the hearing on remedies. The Tribunal will then decide on the most appropriate action it considers the Crown should take to compensate for, or remove, the prejudice to the claimants, or to prevent other persons from being similarly affected in the future. The last-mentioned

4. Paper 2.57

5. Ibid, p 2

matter is not relevant if the Tribunal is considering whether or not to make a binding recommendation in respect of memorialised land.

We have considered at some length the Crown's detailed submissions on the legislative scheme which now governs the Tribunal's jurisdiction to make recommendations to the Crown. We are unable, for the reasons we have given, to find in the Crown submissions on the legislative scheme, support for the necessity to adopt a higher standard of proof for which they contend when the Tribunal is considering whether or not to make a recommendation under s 6 of the Act for the return of memorialised land in contrast to any other recommendations.

The Crown submitted four reasons in support of its contention that the material facts relied on by the Tribunal as a basis for the resumption of memorialised land, must be established to a reasonably high degree of probability. For the reasons we have given, the Tribunal does not accept this submission of the Crown.

In our opinion the Tribunal, when considering whether or not to make a binding recommendation for the return of memorialised land, should comply with the directions of the Court of Appeal in *T v M* (1984) 2 NZFLR 462. Although we are not a court of law and are not bound by evidential or other rules applicable to civil proceedings in a court, we have found it appropriate to adopt the standard of proof customarily applied in civil proceedings, viz the balance of probabilities. This was the test in issue in *T v M*.

After emphasising that the required *standard* of proof is a constant, Woodhouse P said that in any evidential context it is logically right for conclusions in the area of inference and judgment to be influenced both by the purpose to which they are directed and the significance of the assessment being made. We pause here to note that in the context of whether or not the Tribunal, in any given instance, should make a binding recommendation for the return of memorialised land, it will be right for it to take into account the purpose, viz to compensate for or remove prejudice to Maori arising from well-founded Treaty breaches. As Woodhouse P states, it would also be right for the Tribunal to be influenced by the significance of the assessment being made. Thus, the Tribunal should take into account the greater consequences that a binding recommendation for the return of memorialised land would have for the Crown than would a non-binding recommendation for the return of other land.

In referring to the various ways in which the matter has been expressed in the case law, Woodhouse P referred (among others) to the New Zealand case of *Hall v Hall* (like *T v M*, a paternity case) in which Sir Richard Wild CJ referred to 'giving due weight' to the gravity of the allegation. He also referred to Lord Justice Morris, who, in *Hornal v Neuberger Products Ltd*, stated that the very element of gravity becomes a part of the whole range of circumstances which have to be weighed in the scale when deciding as to the balance of probabilities.

When the Tribunal is considering whether or not, as part of its recommendation under s 6, to make a binding recommendation for the return to Maori of memorialised land, it will be concerned with 'a whole range of circumstances' which it will need to weigh. Clearly the consequences of such a recommendation would need to be given serious consideration given its effect on the Crown.

In deciding whether or not to make a binding recommendation for the return of land the Tribunal considers it should be guided by the judgment of the Court of Appeal in *T v M* delivered by Woodhouse P when he says, 'It is the principle of good common sense that the more serious the issue the greater should be the care used in assessing it'.

We believe that if the Tribunal follows this principle of good common sense in assessing the relevant evidence and the submissions of counsel, it will be acting fairly to the parties and in accordance with its statutory obligations.⁶

Following this preliminary decision, the Tribunal heard evidence from the claimants and the Crown and lengthy submissions concerning the exercise by the Tribunal of its power to make binding recommendations in terms of sections 6(3) and 8A(2) of the Treaty of Waitangi Act 1975. This hearing took place at Hirangi Marae on 16 and 17 July 1997.

Leave was reserved to the parties to adduce further evidence and for claimant counsel to make written submissions by way of reply. These were received by January 1998. Issues arising from submissions of counsel are considered in chapter 2.

6. Paper 2.57, pp 41–44

CHAPTER 2

REMEDIES HEARING

2.1 OPENING SUBMISSIONS OF COUNSEL

2.1.1 Claimant counsel

In opening her submissions, claimant counsel Carrie Wainwright advised that evidence would be presented to support the claims set out in the third amended statement of claim in respect of remedies.¹ The remedies sought by Ngati Turangitukua are by way of redress for the Crown's breaches of the Treaty of Waitangi as found in the Tribunal's *Turangi Township Report 1995*. These various breaches together, with supporting evidence, are noted in chapter 3.

The claimants rely in toto on the Tribunal's findings as to fact and as to Treaty breaches. Counsel advised that the further evidence to be presented in the hearing on remedies was intended to elaborate on prejudice suffered as a result of the Crown's Treaty breaches. They ask the Tribunal to factor all the breaches and prejudice found in the 1995 report into its assessment of appropriate remedies.

The statement of claim lists various categories of properties located in the Turangi township that Ngati Turangitukua seek to have returned. These are itemised in various schedules appended to the third amended statement of claim (see app 1). Monetary compensation for specified purposes is also sought, as specified in particular claims. All the remedies sought are considered in the evidence of Mahlon Nepia, which along with other evidence called by the claimants and the Crown, is detailed in chapter 4.

2.1.2 Crown counsel

Crown counsel Peter Andrew, in opening, conceded that the Tribunal can properly consider exercising binding powers within the context of a relief package for all the hapu's Treaty claims to the land in the Wai 84 claim area; that is to say, the Turangi township.² Counsel advised that the Crown did not oppose the making of some resumption orders in this claim but did oppose the resumption of all the memorialised properties, as sought by the claimants.

1. Document E11, p 2; claim 1.1(ac)

2. Document E12, p 1

2.2 THE STATUTORY FRAMEWORK

Before considering the evidence relating to remedies and the submissions on behalf of the claimants and the Crown as to what remedies the Tribunal should make, it is necessary to outline the statutory framework relating to the Tribunal's jurisdiction to make binding recommendations. A number of questions raised by counsel relating to the exercise of the Tribunal's discretion to make such recommendations will also be considered.

In our preliminary decision of 25 March 1997, we gave full consideration to the statutory power of the Tribunal to make binding recommendations for the return of property memorialised pursuant to section 27B of the State-Owned Enterprises Act 1986.³ It would be otiose to repeat our lengthy discussion of the very detailed submissions made by counsel on those provisions in the context of an argument relating to the requisite standard of proof which we have noted in chapter 1.

The Tribunal's jurisdiction to consider claims is conferred by section 6 of the Treaty of Waitangi Act 1975. Section 6(1) gives the Tribunal power to consider any Maori claim that a Maori or group of Maori 'is or is likely to be prejudicially affected' by any legislation, policy or practice, or act or omission of the Crown that 'was or is inconsistent with the principles of the Treaty'.

Section 6(3) empowers the Tribunal to make recommendations to the Crown on action to be taken to remedy any *well-founded* claim. It states:

If the Tribunal finds that any claim submitted to it under this section is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.

Section 6(4) provides that:

A recommendation under subsection (3) of this section may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the Crown should take.

For reasons that we have discussed in some detail in our preliminary decision, part I of the Treaty of Waitangi (State Enterprises) Act 1988 (the TOWSE Act) conferred expanded powers on the Tribunal.⁴ These were agreed upon by Maori and the Crown in 1987 following the judgment of the Court of Appeal in *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (the *Lands* case).

The key sections for our purposes are the insertion by section 4 of the 1988 Act of a section 8A to follow section 8 of the Treaty of Waitangi Act 1975.

Section 8A(1) provides that the section applies to any land or interest in land transferred to or vested in a State-owned enterprise in accordance with the State-

3. Paper 2.57

4. Ibid, pp 2–11

Owned Enterprises Act 1986 whether or not such land or interest is still vested in the State enterprise. Section 8A provides:

(2) Subject to section 8B of this Act, where a claim submitted to the Tribunal under section 6 of this Act relates in whole or in part to land or an interest in land to which this section applies, the Tribunal may—

(a) If it finds—

(i) That the claim is well-founded; and

(ii) That the action to be taken under section 6(3) of this Act to compensate for or remove the prejudice caused by the ordinance or Act, or the regulations, order proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission that was inconsistent with the principles of the Treaty, should include the return to Maori ownership of the whole or part of that land or of that interest in land,—

include in its recommendation under section 6(3) of this Act, a recommendation that that land or that part of that land or that interest in land be returned to Maori ownership (which recommendations shall be on such terms and conditions as the Tribunal considers appropriate and shall identify the Maori or group of Maori to whom that land or that part of that land or that interest in land is to be returned);

.

(3) In deciding whether to recommend the return to Maori ownership of any land or interest in land to which this section applies, the Tribunal shall not have regard to any changes that, since immediately before the date of the transfer of the land or interest in land from the Crown to a State enterprise or an institution within the meaning of section 159 of the Education Act 1989, have taken place in—

(a) The condition of the land or of the land in which the interest exists and any improvements to it; or

(b) Its ownership or possession or any other interests in it.

(4) Nothing in subsection (2) of this section prevents the Tribunal making in respect of any claim *that relates in whole or in part to any land or interest in land* to which this section applies any other recommendation under subsection (3) or subsection (4) of section 6 of this Act. [Emphasis added.]

Subsection (3) is of importance as giving effect to paragraphs (g)(ii) and (iii) of the preamble to the 1988 Act.

2.3 RELATIONSHIP BETWEEN SECTIONS 6(3) AND 8A

The Tribunal in its preliminary decision rejected submissions of the Crown that the Legislature has in effect provided two separate and distinct codes when the Tribunal, having found a claim to be well-founded, is deciding under section 6(3) what action the Crown should take by way of remedy. A decision as to whether any memorialised land should be returned cannot be made in terms of section 8A(2) standing on its own. Any recommendation for the return of such land is to be included in the recommendations that the Tribunal thinks fit to make under section 6(3) and (4) of the 1975 Act.

We determined that the relevant provisions of section 8A are entirely dependent for their implementation on the powers conferred on the Tribunal by section 6(3). The two sets of provisions together constitute a unified code.⁵

2.4 REMEDIAL NATURE OF RESUMPTION PROVISIONS

In support of his argument on the standard of proof, Crown counsel characterised the binding recommendatory powers as exceptional. As a consequence, he submitted that a higher standard of proof should apply to them. In its decision of 25 March 1997, the Tribunal commented:

We recall that these powers were conferred on the Tribunal by agreement between the Crown and Maori and with the sanction of the legislature in order to ensure that the Crown would meet its Treaty obligations. They are the direct outcome of the Court of Appeal decision in *Lands* case. They were clearly intended to be remedial. Assuming it is appropriate to characterise them as ‘exceptional’, we are not convinced that that circumstance in itself calls for differing standards of proof as between binding and non-binding recommendations which together form the totality of recommendations which may be made under s 6(3).⁶

2.5 WELL-FOUNDED CLAIMS

Although not pursued at the substantive hearing on remedies, it is desirable to refer to a submission by Crown counsel at the standard of proof hearing on ‘well-founded’ as it appears in section 8A(2)(a)(i). Put shortly, the Crown contended that claims that may be well-founded for the purposes of section 6 may not reach the evidential level standard that Crown counsel contended should be required for the purposes of section 8A(2). For reasons that it gave in its decision of 25 March 1997, the Tribunal noted that the reference in section 8A(2)(a)(i) to the Tribunal finding that a claim is well-founded is, in the opening words of section 8A(2), a reference to ‘a claim submitted to the Tribunal under section 6 of this Act [which] relates in whole or in part to land . . . to which this section applies’; that is to say, to State-owned enterprise or former State-owned enterprise memorialised land. It is clear that the jurisdiction to decide whether a claim is well-founded is conferred by and is to be exercised by the Tribunal in terms of section 6 and not section 8A.⁷

The Tribunal also noted in its decision of 25 March 1997 that it adopted an observation of counsel assisting the Tribunal that it is important to bear in mind that the Tribunal has, in its report, determined that the claim is well-founded. We agree with his submission that the Tribunal cannot go back on those findings.⁸

5. Paper 2.57, p 14

6. Ibid

7. Ibid, pp 18–20

8. Ibid, p 22

2.6 THE APPROACH TO REMEDIES

2.6.1 Three forms of action

As noted earlier, if the Tribunal finds any claim under section 6 is well-founded, it has a wide discretion to recommend that action be taken:

- to compensate for; or
- to remove the prejudice; or
- to prevent other persons being similarly affected in the future.

This section, for reasons that we elaborated on in our decision of 25 March 1997, applies as equally to land memorialised under the provisions of section 27B of the State-Owned Enterprises Act 1986 as it does to all non-memorialised land within the jurisdiction of the Tribunal.⁹ The same principles should operate whether the Tribunal is considering binding or non-binding recommendations.

In the present claim, however, we will not be concerned with the third form of action. As noted in our decision of 25 March 1997, the prevention of future prejudice to other persons is more likely to be achieved by legislation or administrative action.¹⁰ The Tribunal in its *Turangi Township Report 1995* confined its initial recommendations to proposed changes to parts II and III of the Public Works Act 1981 and a recommendation that the Act should be amended to provide that it should so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.¹¹

In her closing submissions, Crown counsel Briar Gordon stated:

The Crown wishes to draw to the Tribunal's notice the fact that review of the Public Works Act is in progress, and that the Tribunal's recommendation in its *Turangi Township Report* was one of the factors taken into account in determining the scope of the review.¹²

No time-frame for this review was provided. This Tribunal has received no further information on the progress and status of this review of the Public Works Act. Nor are we aware of any consultation with Maori on this matter.

The Tribunal will, however, be concerned with both the first and the second options in section 6(3); namely, action to compensate for and to remove the prejudice arising from the Crown's Treaty breaches. These are discrete but not mutually exclusive forms of action. Indeed, the same action may serve both purposes. Thus, a binding recommendation for the return of land included in a recommendation under section 6(3) is clearly a means of compensating Maori for land lost as a result of Treaty breaches by the Crown. At the same time, it may well be a means of removing the prejudice caused by such Crown action in that it will serve to restore, in part if not wholly, the rangatiratanga of a hapu or iwi over such land.

9. Ibid, pp 15–18

10. Ibid, p 17

11. Waitangi Tribunal, *Turangi Township Report 1995*, Wellington, Brooker's Ltd, 1995, sec 22.4

12. Document E15, para 56

It is significant that section 6(3) speaks of ‘prejudice’ rather than ‘loss’. Prejudice, as claimant counsel submitted, is a broader, rights-based concept, relating to harm that may be tangible or intangible, whereas the notion of ‘loss’ places more emphasis on loss of a material or economic nature. The Tribunal in its *Taranaki Report* considered that loss could not be quantified simply in terms of land but that it must also be assessed:

in terms of the impairment of the group’s social and economic capacity, the generational distortion of its physical and spiritual well-being, and the flow-on effects on subsequent standards of living.¹³

Counsel for the claimants prefaced her discussion of an approach to remedies by emphasising the need for a principled but not legal approach.¹⁴ She submitted that the Tribunal is not a court of law and it is inappropriate to apply legal constraints to the question of remedies in this jurisdiction. Nor is the Treaty a contract; it is more in the nature of a compact or partnership with a fiduciary underlay. We agree with the foregoing, which is reflected in a statement in the *Muriwhenua Land Report* that, when reviewing historical matters:

The Tribunal is not called upon to determine actionable wrongs, to quantify particular losses or to award damages for property losses and injuries upon legal lines. The Treaty is not a commercial contract, nor is the Tribunal a court.¹⁵

2.6.2 Relevance of Treaty principles

We concur with the view of the Tribunal in the *Muriwhenua Land Report* that:

Since the case for the claims is based upon the principles of the Treaty of Waitangi, it appears the remedy, for general wrongs affecting peoples, should also have regard to Treaty principles.¹⁶

This Tribunal considered that two Treaty principles were of particular application to those claims of Ngati Turangitukua which we hold to be well-founded.

The first is that *the cession of sovereignty was in exchange for the protection of rangatiratanga*.¹⁷

We stressed the importance of this principle, which has been seen by the Tribunal as overarching and far-reaching because it stems directly from articles 1 and 2 of the Treaty itself. Inherent in or integral to this basic principle is:

- the Crown obligation actively to protect Maori rights;
- the duty to consult; and
- redress for past breaches.

13. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, sec 5.9

14. Document E13, paras 3.1.1–3.1.2 (unless otherwise stated, all references to submissions of claimant counsel can be found in this document).

15. Waitangi Tribunal, *Muriwhenua Land Report*, Wellington, GP Publications, 1997, sec 11.2.3

16. Ibid, sec 11.4.4

17. See *Turangi Township Report* 1995, sec 15.2, for a discussion of this principle.

Implicit in this principle is the notion of reciprocity. Under article 1, Maori conceded to the Crown kawanatanga, the right to govern, in exchange for the Crown guaranteeing to Maori under article 2 tino rangatiratanga, full authority and control, over their lands, forests, fisheries, and other valuable possessions (taonga) for so long as they wished to retain them.

The second relevant Treaty principle is the *principle of partnership*.¹⁸

This principle is well established. It was authoritatively laid down in the *Lands* case where the Court of Appeal found that the Treaty signified a partnership between Pakeha and Maori requiring each to act towards the other reasonably and with the utmost good faith.¹⁹

In a later case, the Court of Appeal expressed the relationship in this way:

The Treaty created an enduring relationship of a fiduciary nature akin to a partnership, each party accepting a positive duty to act in good faith, fairly, reasonably and honourably towards the other.²⁰

We have found in the *Turangi Township Report 1995* that the Crown failed in various ways actively to protect the rangatiratanga of the claimants and to act in good faith and reasonably towards them.²¹ At the heart of the claim lies the failure of the Crown to honour many of the undertakings and assurances it gave to the owners, which formed the basis of the approval in principle they gave to the construction of the township on their land. This failure reflected an absence of good faith and was neither fair nor reasonable.

Claimant counsel submitted that the conduct of the Crown should be taken into account by the Tribunal when considering remedies. She contended that the Crown's conduct is specifically relevant in the context of the undertakings given by the Crown in 1964, many of which the Tribunal has found were not honoured by the Crown (see ch 3). We agree that such failures by the Crown are relevant to an assessment of both the seriousness of the breach and the prejudicial effect on the claimants.

2.6.3 The restorative approach

In the *Ngai Tahu Report 1991*, the Tribunal saw the restoration of Ngai Tahu's rangatiratanga as being essential to a just settlement:

It is clear that if the Crown is to meet its Treaty obligation to redress its numerous and longstanding breaches of the Treaty it must restore to Ngai Tahu their rangatiratanga and hence their mana within the Ngai Tahu whenua. . . .

It is equally clear that the restoration of Ngai Tahu rangatiratanga will, in today's circumstances, need to take various forms.²²

18. Ibid, sec 15.3

19. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641, 642

20. *Te Runanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301, 304

21. *Turangi Township Report 1995*, ch 22

22. Waitangi Tribunal, *Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, vol 3, sec 24.2

While the Crown cannot restore rangatiratanga in the abstract, it can restore to Maori some resources that enable Maori to exercise rangatiratanga. The Tribunal agreed that the return of land was an essential component in the restoration of rangatiratanga.²³

The Orakei Tribunal adopted the restoration approach in making recommendations on remedies for Ngati Whatua, who were left landless following Public Works Act seizures and other Crown actions. The Tribunal considered that a policy of tribal restoration must be directed to ‘assuring the tribe’s continued presence on the land, the recovery of its status in the district and the recognition of its preferred forms of tribal authority’.²⁴

Claimant counsel submitted that the restorative approach is directly applicable to the present claim. She referred to the Tribunal finding that the failure to protect rangatiratanga was at the heart of the Crown’s Treaty breaches. Counsel invoked the ‘draconian’ statutory powers of the Crown, the choice of township site, the insistence on acquiring freehold, and the failure to respect the mana of the hapu and preserve an economic base for Ngati Turangitukua as all being matters that directly affected and continue to affect the claimants’ rangatiratanga. We agree with her submission that rangatiratanga must be restored if the Treaty claim is to be resolved.

In the *Muriwhenua Land Report*, the Tribunal expressed a preliminary view on the appropriate approach to relief. It noted that where the place of a hapu has been wrongly diminished an appropriate response is to ask what is necessary to re-establish it. This suggests a restorative approach. On this basis, the Tribunal formulated a number of relevant factors to be considered, which could include:

- the seriousness of the case – the extent of property loss and the extent of consideration given to hapu interests;
- the impact of that loss, having regard to the numbers affected and the lands remaining;
- the socio-economic consequences;
- the effect on the status and standing of the people;
- the benefits returned from European settlement;
- the lands necessary to provide a reasonable economic base for the hapu and to secure livelihoods for the affected people; and
- the impact of reparation on the rest of the community (so that local and national economic constraints are also relevant).

The Tribunal added, ‘the thrust, it may be argued, is to compensate for past wrongs and remove the prejudice, by assuring a better arrangement for the hapu in the future’.²⁵

Counsel for the claimants noted that the Taranaki Tribunal would add to the Muriwhenua Tribunal list:

23. *Ngai Tahu Report 1991*, vol 3, sec 24.5.1

24. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed, Wellington, GP Publications, 1996, sec 14.2.3

25. *Muriwhenua Land Report*, sec 11.4.4

That which is necessary to remove the sense of grievance is a related consideration. It cannot be assumed that grievance dissipates with time.²⁶

In his submissions on the general approach to remedies, Crown counsel accepted, as did claimant counsel, that remedies should not be assessed on a damages basis.²⁷

In determining appropriate redress Crown counsel submitted it is necessary for the Tribunal to make some assessment of the effect and extent of the prejudice in question. Such redress should bear some proportion to the prejudice and the nature of the Treaty breaches identified. We agree that, in determining what recommendations the Tribunal should make, regard should be had to the nature, extent, and effect of Treaty breaches.

Crown counsel then referred to the passage from the *Muriwhenua Land Report* cited above in which the Tribunal suggested a number of factors which might be relevant to determining appropriate remedies. Counsel accepted that it is helpful to apply a number of these factors and included all but one of the seven factors proposed by the Muriwhenua Tribunal. Counsel omitted the sixth factor which relates to the lands necessary to provide a reasonable economic base for the hapu and to secure livelihoods for the affected people.

Crown counsel also accepted that the Tribunal may properly have some regard to tribal restoration in assessing appropriate redress. He cautioned, however, that in considering tribal restoration care needs to be taken to ensure that the level of redress does not become dependent on the contemporary needs of iwi that are unconnected with the historical wrongs being addressed. Counsel submitted that the focus of the statutory scheme is upon prejudice caused by the Crown wrongs. He conceded that Treaty breaches in many cases have undermined the economic and social base of iwi. Equally however, he suggested, the current needs of iwi may arise from a wide range of complex political, social and economic factors.

This Tribunal considers the restorative approach to remedies to be appropriate in this claim. It considers the various factors formulated by the Muriwhenua Tribunal to be relevant although not all will have equal weight. Many of the Crown's Treaty breaches diminished the rangatiratanga of Ngati Turangitukua. Other breaches, as a result of the Crown failing to act reasonably and in good faith towards the claimants, seriously eroded the trust which should have been maintained between the Treaty partners. It is apparent to the Tribunal that to redress the prejudice suffered by the hapu it is essential that some land be restored to the hapu for the benefit of its members as a necessary step towards restoring, to some degree, the rangatiratanga of Ngati Turangitukua in their ancestral homeland. This and other measures will be required to assist the hapu to regain their turangawaewae, their standing, as the tangata whenua of their Turangi rohe, and to have their mana appropriately recognised in the wider community.

26. *The Taranaki Report: Kaupapa Tuatahi*, sec 5.9

27. Document E14, para 2.7 (unless otherwise stated, all references to submissions of Crown counsel can be found in this document).

2.7 THE EXERCISE OF BINDING POWERS

2.7.1 Causal nexus

The Tribunal has had some difficulty in reconciling the submissions of Crown counsel on this matter. He correctly noted that binding recommendations can only be made in respect of claims that ‘relate in whole or in part’ (s 8A(2)) to the memorialised land in questions. Later in his submissions, Crown counsel accepted that there is no jurisdictional barrier on the basis of nexus such that the Tribunal is precluded from exercising its binding powers. He accepted that ‘the well-founded claims clearly all relate to the memorialised land’. This because, as he noted, such land was the very same land that was taken by the Crown under the Public Works Act and Turangi Township Act in the first instance – that the taking of all that land (including other land in the area still in Crown ownership) was found by the Tribunal to be in breach of Treaty principles. Given these admissions we might have expected that the jurisdiction of the Tribunal to make binding recommendations in respect of any such memorialised land was beyond question.

2.7.2 Direct relationship?

However, prior to making the above concessions, Crown counsel submitted that the nexus requirement, (which we take to be a reference to the requirement in section 8A(2)), means that there must be a *direct* relationship between the historical wrong and the memorialised land before resumption of the land can be ordered. Section 8A(2) requires only that the claim must ‘relate in whole or in part’ to the land to which the section applies. Section 8A(1)(a) expressly provides that the section applies in relation to *any* land transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986. We observe that there is no requirement in the statutory provision that it must relate *directly* to any such land. On its face, a claim may ‘relate’ directly or indirectly to ‘any’ memorialised land.

In support of this submission counsel noted that resumption can only be ordered in respect of a ‘well-founded’ claim that *relates* to memorialised land. ‘Well-founded’ requires a finding of both Treaty principle breach by the Crown and prejudice to the claimants. He conceded this does not mean that there have to be separate and individual Treaty breaches in respect of each particular memorialised property. However, Crown counsel suggested the ‘direct’ relationship requirement means that something more than the property being in the claim area is necessary. ‘Memorialised properties’, he submitted, cannot be returned by way of compensation for ‘general’ Treaty breaches. Counsel appears to have overlooked that s8A(2)(a) applies to *any* memorialised land to which the claim relates. There is nothing in the section which confines the Tribunal’s jurisdiction to particular categories of such land. If this had been intended, plain and unambiguous language would be needed.

Crown counsel submitted that in enacting the 1988 legislation, Parliament did not intend to reserve State assets in order to meet the broad economic claims and needs of tribes. Parliament, he argued, had something more limited in mind, namely, that

binding powers should only be exercised where some specific feature of the history of the asset means that it should be returned to Maori ownership. He gave no reasons for this contention and pointed to no statutory provision which expressly or impliedly placed this narrow interpretation on section 8A(2). Nor did he give any explanation of what constituted ‘some special feature’ of the ‘history’ of the asset.

Crown counsel next stated that ‘binding orders can thus properly be categorised as site-specific redress’. This appears on its face to be no more than a refinement of his earlier unsupported assertion with no basis in the legislation.

To determine whether there is any justification for the narrow interpretation of section 8A(2) contended for by the Crown it is instructive to look at the TOWSE Act which inserted sections 8A, 8B, 8C, and other provisions by way of amendment to the Treaty of Waitangi Act 1975.

As noted in our preliminary decision, these provisions have their genesis in a series of events commencing with the enactment of the State-Owned Enterprises Act 1986; followed by the landmark decision of the Court of Appeal in *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (the *Lands* case) which in turn led to negotiations between the Crown and the Maori Council. The outcome was the enactment of the TOWSE Act.

A lengthy preamble to the TOWSE Act gives the background to the Act. Paragraph (f) of the preamble records that there has been agreement on a system of safeguards, to apply after the transfer of assets to State enterprises by the State-Owned Enterprises Act 1986, so that, in the public interest, the transfers authorised by the 1986 Act may take place as soon as practicable.

Paragraph (g) of the preamble is as follows:

- (g) It is essential, in order to protect the position of Maori claimants and to ensure compliance with section 9 of the State-Owned Enterprises Act 1986, that there be safeguards—
 - (i) Including power for the Waitangi Tribunal to make a binding recommendation for the return to Maori ownership of any land or interests in land transferred to State enterprises under that Act; and
 - (ii) Requiring the Waitangi Tribunal to hear any claim relating to any such land or interest in land as if it or they had not been so transferred; and
 - (iii) Precluding State enterprises and their successors in title from being heard by the Waitangi Tribunal on claims relating to land or interests in land so transferred

We note that this paragraph emphasised the need for the position of Maori claimants to be protected; the need to ensure that the Crown complies with section 9 of the State-Owned Enterprises Act (which prohibits the Crown from acting in a manner inconsistent with the principles of the Treaty of Waitangi); and the need for safeguards for Maori.

The safeguards referred to are enacted in section 8A(1)(2)(a), (3) and (4) which we have noted in section 2.3 in our discussion of the statutory provisions. These provisions are intended to protect and safeguard Maori claimants whose claims relate

to land transferred to a State enterprise by providing for its return in terms of sections 8A(2)(a) and 6(3) of the 1975 Act. The provisions are clearly intended to be remedial. If it had been intended that they should be applicable only if they relate directly to some but not all such land, we would expect the statute to have said so. In our view, the provisions of section 8A(2)(a) and section 6(3) should be construed in accordance with section 5(j) of the Acts Interpretation Act 1924 as being remedial and given such ‘fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act’.

We consider that the Crown attempt to read down the provision, so as to apply only to claims which relate ‘directly’ to particular categories of land transferred to State enterprises, is inconsistent with such fair, large, and liberal construction.

2.7.3 Added value

Crown counsel referred to section 8A(3) which provides that, in deciding whether to recommend the return to Maori ownership of any State enterprise memorialised land, the Tribunal is not to have regard to any changes that, since immediately before the date of transfer of the land from the Crown to a State enterprise, have taken place in:

- (a) The condition of the land . . . and any improvements to it; or
- (b) Its ownership or possession or any other interests in it.

Counsel contended that the fact that the Tribunal is precluded from considering ‘added value’ since the land has been transferred from the Crown emphasises that binding powers are directed at redressing specific historical wrongs relating to particular sites. He submitted that it cannot simply be exercised because the land just happens to be in the claim area, and may, in today’s terms, meet the commercial aspirations of claimants.

In considering this submission, we should state what the Tribunal believes to be the purpose of these provisions. They must be read in conjunction with sections 27A and 27B, which were inserted in the State-Owned Enterprises Act 1986 by sections 9 and 10 of the TOWSE Act.

Section 27A of the 1986 Act provides that, where any land is transferred to a State enterprise under section 28 of that Act, the district land registrar is to note a memorial on the certificate of title to the effect that the land is:

Subject to section 27B of the State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of any such recommendation).

The reason that no provision is made for third parties to be heard on any application for a binding recommendation under section 8A is that they are excluded by section 8C, which limits the persons entitled to be heard on any such application to

the claimant, certain Ministers of the Crown, and any Maori having an interest apart from any interest in common with the public. Thus, neither a State enterprise which owns the land, nor any person who has since acquired the memorialised land, may be heard.

Given the legislative history of the resumption provisions, it is apparent that the reason for preventing a State enterprise or any subsequent owners from being heard by the Tribunal is to ensure that the Tribunal is not inhibited by, for instance, evidence that the State enterprise or a subsequent owner has incurred expenditure in making improvements (added value) to the land, or that the owner would incur personal or financial hardship, should the property be resumed by the Crown and returned to Maori. Should a resumption order be confirmed under section 8B of the Treaty of Waitangi Act 1975, the owner of such land is to be compensated by the Crown under the Public Works Act 1981.

The Tribunal is unable to find in these provisions, the reasons for which appear to be abundantly clear, any justification for Crown counsel's submission that they emphasise 'that binding powers are directed at redressing specific historical wrongs relating to particular sites'. But for the fact that this is a test case, it would appear unnecessary for the Tribunal to consider this submission further. However, in deference to the Crown's submissions, in which this argument is given considerable weight, we will consider its implications further.

The Crown appears to be attempting to confine Maori claimants seeking a binding order for the return of any memorialised land to a time-warp. If the Treaty breach occurred 150 years ago, the Tribunal's jurisdiction to recommend the return of memorialised properties is, it appears, to be confined to specific pieces of land to which specific historical wrongs (ie, Crown Treaty breaches) directly relate. The Crown argument implies that no regard should be had to anything which may have occurred to the land since the Treaty breaches occurred. No regard can be had to any change in its condition or to any improvements to it, viz 'added value'.

The difficulty with this proposition is that this is not what the statute says. It is clear that the Tribunal is prevented by section 8A(3) from taking into account 'added value' since the land was transferred by the Crown to a State enterprise; it is equally clear that the Tribunal is not prevented from taking into account 'added value' which accrued from the time of the Crown's Treaty breach up to the time immediately before the Crown transferred the land to a State enterprise. If, at that time, the character of the land in question had, for instance, changed from pastoral or agricultural to residential or commercial use, the Tribunal is entitled to have regard to its changed character.

In the present claim, it was the Crown which radically changed the character of Ngati Turangitukua's ancestral land. It was the Crown which facilitated the construction of a new township which made provision for industry, housing, commercial buildings, various forms of accommodation, and servicing functions including a town shopping centre, to name only some of the features of the new Turangi township.

It was over 20 years from the establishment of the new town before the Crown embarked on transferring land to State enterprises following the TOWSE Act of 1988 which made such land subject to the provisions of section 8A of the Treaty of Waitangi Act 1975. The new Turangi township, as one would expect, was planned to provide residential, commercial, educational, health, Government agencies, sporting, recreational, and other amenities. By 1988, the town centre with provision for shopping, banking, post-office, and other commercial activities, including hotel and related accommodation, had been largely developed for some 20 years.

We reiterate that section 8A(3) applies to *any* memorialised land, whether it is being used for residential, commercial, or any other use. Moreover, it applies to all such land whatever its use and condition immediately before its transfer by the Crown to a State enterprise.

The Tribunal considers it to be abundantly clear that, in considering whether to recommend the return of any particular section 27B memorialised land, it may have regard, as best it can, to its condition including any improvement immediately before its transfer by the Crown to a State enterprise.

The Crown's narrow view overlooks that the Turangi township was built on ancestral land of Ngati Turangitukua. For several hundred years, it had been their papakainga and a central part of their ancestral home territory. It was their turangawaewae (see ch 4). The fact that, as a consequence of successive Native Land Acts, the land was partitioned and ownership fragmented among Ngati Turangitukua whanau did not mean that it was no longer papakainga land. It retained this character, even as it does today, except that the hapu has been physically excluded from much of it as a result of Treaty breaches of the Crown. No land could be of more importance to Maori than their papakainga land. The Crown's insistence that there be some special feature of the history of the asset, that is, of a particular piece of memorialised land, as distinct from being part of the papakainga land taken by the Crown, is untenable and fails to recognise the depth and abiding nature of the relationships of Ngati Turangitukua to their ancestral home territory, to their papakainga.

2.7.4 Choice of township site

Among the Tribunal's findings of Treaty breaches by the Crown was one relating to the choice of the township site.²⁸ In section 17.2 of its *Turangi Township Report 1995*, the Tribunal discussed the relevant evidence on the choice of the township site. The Crown considered that two sites were suitable – the land taken from the claimants at Turangi West and the nearby site across the Tongariro River known as the Turangi East site. Ngati Turangitukua claimed to have been prejudicially affected by the Crown policy of taking their land for a township without first ensuring that no Crown land was available as an alternative.

The Tribunal noted that physically and climatically the Turangi East site, situated on the east bank of the Tongariro River and on Crown land opposite the then existing

28. *Turangi Township Report 1995*, secs 2.4, 5.8.4, 17.2.2, 18.3.7(5)

Turangi village, was potentially as good as the Turangi West site. Indeed, it had some advantages in that there was more room for expansion than the Turangi West site, which was constrained by the Tongariro River and swamp lands to the north and steep hill slopes to the south. The Turangi East site did, however, need a new bridge over the river.

The Tribunal found that the Turangi East ‘green-field’ site had obvious advantages:

- it was already Crown land;
- there was nobody living on it;
- it would have avoided the enormous disruption caused to the existing Ngati Turangitukua community;
- the Department of Justice did not oppose the use of the site;
- the land was not essential to prison farm operations – the Department of Lands and Survey assumed the management of a substantial block in 1967 and the land was subsequently transferred by the Crown to Landcorp without reference to the Department of Justice; and
- Ngati Turangitukua would have been left in possession of the lands taken for the township.

The Crown did not produce any evidence to the Tribunal to indicate that any serious consideration was given to the Turangi East site, although a Crown witness in cross-examination agreed that the Turangi East site was the Crown’s second choice. The Crown accepted that the tangata whenua had ‘minor input’ into the decision of where to site the town. At meetings in 1964, they were informed that Turangi West was the preferred site of the permanent town; the only alternative suggested to the people was a temporary town at Rangipo some distance away. This was erroneous and misleading as the Crown’s actual second preference was the Turangi East site.²⁹

We have discussed this serious Treaty breach of the Crown because it makes it abundantly clear that a legitimate grievance of Ngati Turangitukua was that the Crown elected to take their land compulsorily when a suitable site existed nearby which was already owned by the Crown and was available, had the Crown so chosen, as the site for the new township. The Tribunal was left unaware of any compelling reason why the Crown needed to take Ngati Turangitukua land instead of utilising its own.

2.7.5 Conclusion on nexus

Given that none of the land needed to be taken, the Tribunal is unable to accept that section 8A(3) can be construed as demonstrating that the Tribunal’s power of making binding recommendations can only be directed at redressing specific historical wrongs relating to particular sites. The grievance of the claimants related not just to *particular sites* but to the *whole* of the land compulsorily taken by the Crown in breach of Treaty principles. The Crown concedes this to be the case.

29. Ibid, sec 17.2.2

The Tribunal considers there is nothing in section 8A or elsewhere in the relevant legislation which prohibits it from exercising its discretion under sections 6 and 8A of the 1975 Act that land within the claim area of any particular condition, whether it be used or have potential for commercial purposes or for any other legitimate purpose, should be the subject of a binding recommendation. It recognises that it is prohibited by section 8A(3) from taking into account any change in that condition or any improvements to it since immediately before the transfer of such land by the Crown to a State enterprise.

We would add that when the Tribunal is considering which, if any, memorialised properties or Crown-owned properties it should recommend be returned to Ngati Turangitukua, it should have regard to the aggregate value of all such properties. That value may include changes in the condition of one or more such properties since their transfer by the Crown to a State enterprise. Common sense would appear to require this course and we do not consider the provisions in section 8A(3) are intended to prevent this being done. The Crown provided full current Government valuation details of all memorialised and Crown-owned properties within the claim area and clearly intended that the Tribunal should have regard to them in deciding how many and which properties it might think it appropriate to recommend should be returned to Ngati Turangitukua.

2.7.6 Total relief package

Crown counsel contended that the Tribunal held in its preliminary decision that binding recommendations should be considered as part of the overall recommendations it should make, having regard to all the circumstances of the case. Counsel then submitted that binding recommendations are thus to be made in the context of a total relief package.

Crown counsel appears to be referring to a comment made by the Tribunal at page 16 of its decision when considering a submission by Crown counsel in relation to section 8A(2)(b). This provides that if the Tribunal finds (a) that the claim is well-founded; but (b) a recommendation for return to Maori ownership is not required it may recommend that the land be no longer subject to resumption. Counsel argued that the use of the term ‘required’ reinforces his point that the test for return is an objective one. The Tribunal rejected this submission and in the course of doing so noted that the submission overlooked the fact that a decision by the Tribunal as to whether a recommendation for the return of certain land to Maori ownership is not required is made in conjunction with its consideration of what other recommendations it thinks fit, having regard to all the circumstances, to make under section 6(3), whether for the return of land or other action by the Crown. This observation was made in the context of considering Crown counsel’s submission that the use of the word ‘required’ in section 8A(2)(b) indicated that the test was an objective one. The Tribunal did not say, or infer, nor was the question in issue, that binding recommendations can only be made in the context of a total relief package. It not being necessary to do so, we express no opinion on the question. It so happens

that the claimants have in their third amended statement of claim proposed a comprehensive relief package which includes the return of certain memorialised land and Crown land together with other forms of relief. As we noted in our preliminary decision, the relevant provisions of section 8A are entirely dependent for their implementation on the powers conferred on the Tribunal by section 6(3) and the two sets of provisions together constitute a unified code. Where, as in this claim, we have for consideration proposals for a comprehensive relief package, they will all be considered as such. In the circumstances, we were somewhat surprised that Crown counsel stated in his opening submissions that the Crown does not invite the Tribunal to fix a 'quantum level' for the settlement package.

2.7.7 Is the main jurisdiction non-binding?

Crown counsel submits that the Tribunal should recognise that its main jurisdiction is one of non-mandatory recommendations. He invoked a passage from the judgment of Cooke P in *Tē Runanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641 at page 652. Counsel further contends that binding powers are an exception to the main non-mandatory scheme, a scheme which it is said is based on the concept of a negotiated settlement.

The Tribunal considers this may be true in a good many cases. But cases will doubtless occur from time to time when the Crown, in a particular claim area, has divested itself of all, or substantially all, Crown-owned land, the return of which would be appropriate to compensate a well-founded claim. At the same time, there may be sufficient, or even more than sufficient, memorialised land available in the area which could appropriately be the subject of a binding recommendation. In other cases, there will be an abundance of suitable Crown land available and little if any memorialised land. In yet others, much of the available Crown land may not be suitable, while there may be suitable memorialised land available. In short, it will depend upon the circumstances of any given case, including the appropriateness of recommendations for relief in forms other than the return of land, as to whether the main relief should appropriately come from non-binding or binding recommendations.

2.7.8 Are non-binding powers the starting point?

Crown counsel submits that consideration of the exercise of binding powers is not the starting point of any inquiry into appropriate redress. Counsel submitted that the logical starting point in this claim (and in any others) is with those Crown assets in the Crown land bank. He noted that the claimants in fact seek the return of all the seven properties in the land bank.

We consider this approach too simplistic. Before deciding what properties the Tribunal considers should be returned, whether memorialised land or Crown-owned land, or a mixture of both, it should first review all such properties. It should then determine which are the most suitable to be returned having regard to what is

required to compensate for or remove the prejudice arising from a well-founded claim. This it will do after having regard to all the circumstances of the case. In some instances, some or all of the available Crown properties will be less suitable than some memorialised properties and vice versa. The Tribunal must make the best judgment it can to act fairly and reasonably towards both parties.

Crown counsel went on to consider the exercise of binding powers in this case. He advised that the Crown recognises that in this particular case the Tribunal might properly conclude that the claim can only adequately be settled by including some memorialised land in the redress package. Counsel envisaged that the Tribunal might consider it necessary to resume some of the memorialised land in the Industrial Area given its special significance for the claimants. But outside that area and the specific wahi tapu properties, he submitted that Crown land or cash compensation could be substituted for the return of any other memorialised land. We reserve our comments on this until our discussion of the relief sought by the claimants.

Crown counsel went on, however, to observe that properties described as properties of note (some of which are memorialised properties and others Crown-owned) are being sought for their commercial potential. Claimant counsel, according to Crown counsel, indicated that they were being sought for their ‘improvements’. We are unaware whether this is correct. Crown counsel submitted that the statutory scheme of resumption *prevents* regard being had to added value and that this indicates that it is the particular features of the land itself that are important in a resumption determination.

We have considered this last proposition in our earlier discussion of causal nexus. It is sufficient to say here that the statutory scheme prevents regard being had only to value added to land by way of improvements if such value was added ‘since immediately before the date of the transfer of the land . . . from the Crown to a State Enterprise’ (s 8A(3)). Clearly, the Tribunal can have regard, if it thinks it appropriate, to value added to such land before that time.

2.8 RELATIVITY BETWEEN SETTLEMENTS

2.8.1 Crown submissions

Crown counsel stated that the relativity of compensation/redress as between claimant groups is a matter of fundamental concern to the Crown. It is seen by the Crown as highly relevant to the question of the appropriate level of redress. The theme was a recurring one in the Crown’s submissions on remedies.

We were told that, in determining appropriate redress in the context of negotiated settlements, the Crown is acutely aware of the need to maintain relativities between claimants. In determining relativities as between various settlements, the Crown Treaty settlement policies assess remedy on the basis of historical wrongs rather than the relative contemporary social and economic needs of the tribes. Counsel added that this is not to disregard altogether the contemporary needs of the iwi in any particular case. Clearly, he said, redress is to be relevant in today’s terms. Although

not stated, the Crown appeared to be inferring that the Tribunal should follow suit. We refrain from comment on the Crown's Treaty settlement policies referred to, except to observe that we are unaware of any statutory or other requirement that obliges the Tribunal to adopt or follow such policies.

While the present claim has constantly been referred to by Crown counsel as 'historical', it must be remembered that the entry of the Crown upon Ngati Turangitukua ancestral land occurred as recently as 1964 and continued for some years thereafter. The events which gave rise to the various Treaty breaches occurred in the presence of and were witnessed by many members of the hapu still living today. A number gave evidence before us at the 1994 hearing and two, Arthur Grace and Eileen Duff, gave further evidence at the remedies hearing last year.³⁰ In that sense, the grievances are contemporary; certainly hapu members who experienced the full force of the Ministry of Works activities some 30 years ago are still living with the consequences.

Crown counsel invoked the 'benchmark settlements' of Tainui and Ngai Tahu and in addition the Ngati Whakaue settlement with the Crown. These are considered later along with the submissions of claimant counsel.

Crown counsel elaborated on the importance of maintaining relativities in later paragraphs of his submissions. He stressed that, if the Tribunal were to disregard previous settlements, serious inequities between claims might arise. Decisions on the quantum of redress should not become dependent on the quantity of memorialised land in a claimant group's rohe. Counsel also stressed the responsibility of the Crown to make informed judgements about fiscal constraints.

2.8.2 Claimants' submissions

Counsel for the claimants, Carrie Wainwright, referred to a passage in the Tribunal's decision of 25 March 1997 which notes a concession by Crown counsel that each claim should be settled on its own merits but with the qualification that equities as between different settlements are of relevance.

Claimant counsel submitted that the Crown's approach to settling Treaty of Waitangi claims has been to create a hierarchy of claims. The approach, she said, naturally means that the assessment of where a claim sits in the hierarchy is essentially the Crown's.

Counsel submitted that it is not incumbent on the Tribunal to make recommendations, whether binding or non-binding, which comply with the Crown's view of where claims sit in its hierarchy. She elaborated on this by saying that, while the Crown's approach to seriousness of breach and prejudice may often overlap with, or even mirror that of the Tribunal; in other cases that will not be so. The special jurisdiction of the Tribunal to make binding recommendations is conferred under legislation which makes no reference to the Crown's policies or remedies. Accordingly, counsel submitted that the Tribunal's view of remedies must flow from

30. Arthur Grace was unwell and his wife Terewai Grace read his submissions, documents E4 and E6, to the Tribunal.

its own view of Treaty breach and consequent prejudice. She emphasised that, since the Tribunal's jurisdiction with respect to recommendations is entirely subjective, it is the Tribunal's and not the Crown's view of the situation that prevails.

The Tribunal observes that, because the assessment of quantum in respect of Treaty remedies is necessarily subjective, one Tribunal could differ from another in its assessment. In the same way, different Ministers and Crown advisors are likely to differ one from the other. There is, however, an important distinction between the Tribunal and the Crown when assessing appropriate redress. In the case of the Tribunal, it will base its assessment on all Crown Treaty breaches which it finds to be well-founded. No such obligation rests on the Crown which may, if it so decides, reject one or more such Treaty findings or may consider them to be less serious than does the Tribunal. Thus, there can be no assurance that the Crown and the Tribunal, in any given claim, are basing their assessment of the degree of prejudice to the claimants on a common assessment of the nature and extent of the Crown's Treaty breaches. Where there is a significant difference in the two assessments, there may well be a correspondingly significant difference in the extent of the remedies thought appropriate by the Tribunal on the one hand and the Crown on the other.

Claimant counsel contended that any policies with respect to settlements which the Crown may have in force at any particular time do not bear directly on the Tribunal's task, because the Crown's policy environment is an entirely separate one from that within which the Tribunal is exercising its jurisdiction on remedies. From a constitutional point of view, she submitted, this was what was intended when the Tribunal was established; the Tribunal is to advise the Crown of *its* view. Counsel suggested it would be a 'fruitless loop indeed' if the Crown simply told the Tribunal its policy or remedies, and then the Tribunal made recommendations back to the Crown accordingly.

Counsel next emphasised that every claimant group's situation is unique, and cannot be directly compared with any other claimant group's situation; any prece-dent effect of a particular remedies award can only be very general and approximate.

In her reply to Crown counsel's submissions, Ms Wainwright disputed the Crown contention that the 'scheme' of the Treaty of Waitangi Act is to facilitate negotiated settlements between the Crown and Maori.³¹ She emphasised that the Tribunal's function is to inquire into and make recommendations upon any claim submitted to it under section 6 (s 5(1)). The process contemplated is one in which the Tribunal would first determine whether the claim was well-founded, and then decide on what action it should recommend be taken. The benefit of a negotiated settlement between the claimants and the Crown, counsel said, does not feature in the Act, with the exception of the provisions in section 8B which relate to the Tribunal's binding powers. Nor is there any implication that the Tribunal's role is to facilitate a negotiated settlement. At the time the Act was passed (when the Tribunal's powers were not retrospective), the expectation would have been that the Tribunal's recommendation would be implemented by the Crown.³²

31. Document E24, p 8

32. Ibid, pp 8–9

We agree with counsel's analysis of sections 5 and 6 and, in particular, her submissions that prior to 1985, when the Tribunal's jurisdiction was extended to address grievances arising since the signing of the Treaty in 1840, the expectation was that the Tribunal's recommendations would be implemented by the Crown. But, as she recognised, after 1985 the greater complexities associated with remedying historical claims became apparent. Reports of the Tribunal reflect this. From this point on it is understandable, given such complexities and, in some cases, the sheer magnitude of the Crown's Treaty breaches, that the Tribunal has limited its recommendations principally to legislative changes and other measures which would prevent other persons from being similarly affected in the future. It has recognised that, in the first instance at least, it may often be appropriate that claimants should negotiate directly with the Crown on the basis of the terms of the Tribunal's report and its findings. We think the Crown's proposition that the statutory scheme recognises that ultimately Treaty claims can only be satisfactorily resolved through a negotiated settlement between the Crown and claimants should be modified. For the reasons advanced by claimant counsel, we doubt that the statutory scheme does in fact support Crown counsel's proposition. We do, however, accept that most historical claims which have been reported on by the Tribunal are likely to be settled only after negotiations between the parties.

But there will be cases, of which the present is one, where the parties have failed to reach a mutually acceptable settlement. The statutory scheme permits claimants to invoke the Tribunal's powers to make appropriate recommendations which might include both binding and non-binding recommendations. In the unlikely event that only binding recommendations were made, subsequent negotiations might not be needed. But in the generality of cases, the parties would need to agree on a final settlement.

2.8.3 Relativities with other Crown settlements

Ms Wainwright submitted that the claimants' situation is to be distinguished from the huge historical claims such as Tainui and Ngai Tahu. There, the grievances and their effects were so many, varied, and thorough-going that they cannot really be remedied at all, except in a very generalised way. The enormity of these claims, she maintained, leads to their remedies being swept into a package approach where the monetary value of the settlement becomes the basis of comparison between them. In smaller and more recent claims, like those of Ngati Turangitukua, counsel suggested the Tribunal is able much more effectively to focus on the restoration of individual groups.

Claimant counsel contended that it was not fair or just that Maori claimants are being affected by other iwi settlements, into which they have had no input, and the terms of which they may well disagree with.³³ She argued that, because of an inability to compare claims and settlements except at the crudest level, it is unlikely that other

33. Ibid, p 11

settlements will be destabilised if the Tribunal decides that it does not agree with the Crown's view of Ngati Turangitukua's place in the hierarchy.

Claimant counsel submitted that the sample for comparison of the two major Tainui and Ngai Tahu settlements and the one smaller Ngati Whakaue settlement is not adequate, and must therefore be inconclusive. Of the three, only one, Ngai Tahu, was the subject of an investigation and full report by the Tribunal. Counsel contended that the Tribunal would need to know much more about the process of, and policy basis for, the settlements reached, in order to draw from them guidelines for a proper remedy in this claim.³⁴ Ms Wainwright submitted that the database to which the Crown has referred the Tribunal is too small, and the information too slight, for it to be of any but the most general interest.

More generally, claimant counsel maintained that any comparison between Treaty claims and their settlement can only be very approximate and therefore of limited value. She criticised the failure of the Crown to make even a very general comparison between a 150-year-old grievance relating to a large scale raupatu and the present claim, apart from saying that in its judgement this claim is worth no more than \$3–4 million whereas the Tainui settlement is worth some \$170 million. This, she characterised as 'no more than assertion, and represents no more than an opinion'.³⁵

We have earlier noted that Crown counsel invoked the 'benchmark settlements' of Tainui and Ngai Tahu, the Whakotohea settlement (not then concluded), and a settlement with Ngati Whakaue. Since the hearing, the Whakotohea settlement has collapsed and the Crown's offer has been withdrawn. The Tribunal is left with the two largest settlements and the relatively modest Ngati Whakaue settlement as a basis for comparison.

Crown counsel stated that the Tainui and Ngai Tahu settlements, for which the quantum level is \$170 million, both involve very large and significant Treaty grievances. Both settlements are iwi based and involve a significant number of people and of land.

2.8.4 Waikato–Tainui settlement

In the case of the Waikato–Tainui claim, we were provided with a copy of the deed of settlement dated 22 May 1995.³⁶ In addition, we were referred to the Waikato Raupatu Claims Settlement Act 1995 – in particular, the preamble. Parts E to H of the preamble succinctly refer to the invasion, hostilities, and confiscations of Waikato land. It is recorded that in July 1863 military forces of the Crown unjustly invaded the Waikato south of the Mangatawhiri River, and engaged in hostilities against the Kiingitanga and the people. By April 1864, after persistent defence of their lands, Waikato fell back and took refuge in the King Country. The Crown unjustly confiscated approximately 1.2 million acres of land from the Waikato iwi in order to punish them and gain control of the land placed under the protection of the Kiingitanga. The Crown

34. Document E24, p 12

35. Ibid, p 13

36. Document E19

subsequently paid small amounts of monetary compensation and returned, but not generally to those who had fought for the Kiingitanga, approximately one-quarter of the land confiscated.

Widespread suffering, distress, and deprivation were caused to the Waikato iwi as a result of the war waged against them, the loss of life, the destruction of their taonga and property, and the confiscation of their lands, and the effects of the raupatu have lasted for generations. The deed of settlement also briefly refers to these events.

2.8.5 Ngai Tahu settlement

We were also referred by the Crown to the *Ngai Tahu Report 1991* of the Tribunal. Two of the three members of this Tribunal were members of the Ngai Tahu Tribunal and are therefore well aware of its contents. It was not a raupatu claim and no loss of life occurred as a result of the Crown's activities. In brief the Crown, in 1844, embarked on a 20-year project to acquire Ngai Tahu land. By 1864, for the sum of £14,750, it had acquired 34.5 million acres from Ngai Tahu. This was most of the South Island and more than half the land mass of New Zealand. All but an insignificant fraction of Ngai Tahu's land was gone; only 37,492 acres remained. The Tribunal summarised the effect on Ngai Tahu as follows:

By 1864 Ngai Tahu were in a parlous, some might say pitiable condition. They were now an impoverished people largely confined on uneconomic patches of land, almost entirely isolated from mainstream European development, neglected by government at both central and provincial level, marginalised and struggling to survive both individually and as a people. Their rangatiratanga greatly diminished, their communal way of life and the cultural and spiritual values associated with it seriously undermined. As settlement steadily encroached on them from all sides, as land was progressively fenced and drained, as their access to mahinga kai steadily decreased, Ngai Tahu eked out a bare subsistence on land incapable of sustaining them.³⁷

The Crown, in the deed of settlement with Ngai Tahu dated 21 November 1997, made an apology to Ngai Tahu. Among other matters, the Crown acknowledged that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngai Tahu in the purchase of Ngai Tahu land. It further acknowledged that it failed to set aside adequate lands for Ngai Tahu's use and to provide adequate economic and social resources for Ngai Tahu. The Crown acknowledged that it failed to preserve and protect Ngai Tahu's use and ownership of such of their land and valued possessions as they wished to retain. It also acknowledged that its failure always to act in good faith deprived Ngai Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty.³⁸

It is obvious that the magnitude of the loss and suffering incurred by both the Tainui and Ngai Tahu people over a large period of time greatly exceeded that of Ngati Turangitukua. While there are some features in common, others are unique to each of

37. *Ngai Tahu Report 1991*, vol 3, sec 16.1.1

38. Deed of settlement between Te Runanga o Ngai Tahu and Her Majesty the Queen, 21 November 1997, sec 2

the three claims. But it is impossible, given the complexities and special features of the two 'benchmark settlements' and the special features of the present claim, to make more than a very general comparison. The two major settlements do not, in themselves, pin-point any precise relationship between them and Ngati Turangitukua. It must remain a matter of judgement.

2.8.6 Ngati Whakaue settlement

The third settlement relied on was that of Ngati Whakaue, an iwi of Te Arawa. Crown counsel advised that they settled their major land claims, including, amongst other grievances, the lack of payment for the improper acquisition of 20,000 acres, plus additional land takings for the railway track. Their settlement was \$5.2 million and their population according to the 1996 census was 3264. The only other information provided by the Crown was a copy of a settlement agreement between the Crown and Ngati Whakaue dated 25 September 1997.³⁹

We have given careful consideration to this agreement. Its purpose is to record the terms of the settlement of an informally amended Ngati Whakaue Waitangi Tribunal claim (Wai 94), the details of which are set out in paragraph 4 of the agreement.

The grievances are summarised in paragraph 3 as follows:

Ngati Whakaue have grievances concerning the Crown's actions over the leasing arrangements provided for by the Fenton Agreement and the Thermal Springs Districts Act 1881, the adequacy of the purchase price for the Pukeroa–Oruawhata block and the adequacy of compensation paid as a result of the recommendations of the Myers Commission of 1948. They also have grievances concerning the Crown's ownership and management of various reserves within the Pukeroa–Oruawhata block, free hospital treatment pursuant to the Fenton agreement and the Crown's acquisition of lands for railway purposes.⁴⁰

Paragraph 4(e) of the informally amended claim states that Ngati Whakaue considered the Crown had made no payment for an improper acquisition of lands acquired within the Ngati Whakaue rohe by the Crown for railway purposes including the 20,000 acres known as the Patetere block and land taken for the railway track.

The Crown position is stated in paragraph 5 as follows:

Those grievances concerning leasing arrangements in the 1880s have been validated by research in the past. The Crown considers that review of previous compensation granted is justified. Research by the Department of Justice has not validated the grievances concerning alleged improper acquisition by the Crown of lands for railway purposes, although there may still be questions relating to the adequacy of the price paid. Research is currently being undertaken by the Department of Survey and Land Information in order to validate or invalidate grievances concerning reserves gifted by Ngati Whakaue to the Crown.⁴¹

39. Document E20

40. Ibid, p 1

41. Ibid, p 2

We pause to note that, whereas Crown counsel, and Ngati Whakaue in their statement of claim, refer to the lack of payment for the improper acquisition of the 20,000 acres for railway purposes, the Crown does not admit the alleged improper acquisition of such lands, merely a possibility that the purchase price may have been inadequate. This leaves the true position quite uncertain.

Paragraph 6 states that the offer made by the Crown, set out in paragraphs 7 to 9 is made without prejudice or admission of any legal liability.

In paragraph 7, the Crown agrees to transfer three blocks of land known as the Rotorua railway reserve (comprising approximately 15 hectares) to a company owned by a trust on behalf of Ngati Whakaue. The Crown undertakes to reimburse Railcorp for the cost of the land, being not more than \$5 million plus goods and services tax. The Crown also agrees to meet the costs of Ngati Whakaue in negotiating the claim.

The agreement lacks any particulars of the historical events. It appears that the Crown conceded that those grievances concerning certain leasing arrangements in the 1880s have been validated by research. We are unable to gather from the agreement the nature of such grievances and the extent of their prejudice to Ngati Whakaue. It appears significant that the research by the Department of Justice has not validated the grievances concerning the alleged improper acquisition by the Crown of lands for railway purposes, although there might still be questions relating to the adequacy of the price paid. Presumably, a full and impartial inquiry would have been needed to ascertain the true situation. In both instances, payments were made by the Crown at the time. Although we were not told, it would seem likely that the Crown payment on settlement was less, but how much less we do not know, than it would have been had the allegations been fully investigated and found to have supported the claimants' contentions.

In the absence of an adequate explanation of the basis of the settlement and authoritative findings of the facts, including the nature, extent, and seriousness of any Treaty breaches by the Crown, we are unable to make a meaningful assessment of how this settlement relates to the totally different factual situation which has been comprehensively related in our *Turangi Township Report 1995*.

Moreover, the Crown has failed to provide any detailed reasons why, in its view, the Ngati Turangitukua claim, the subject of a full inquiry and report, is worth no more than \$3–4 million compared with the Ngati Whakaue partially-investigated and contested claim. The few generalities proffered by the Crown are of little, if any, assistance to this Tribunal in attempting to assess the relative equities of the two claims.

Finally, we note that Crown counsel made it clear, in submitting that the Tribunal must have regard to redress provided for other claims, that the Crown is not seeking to impose the fiscal envelope concept on the Tribunal. That policy, intended to put a cap on the total amount of money available for the settlement of historical Treaty claims, has been abandoned. Counsel did not say whether the existence of the fiscal cap had an effect on settlements made before it was abandoned. It would be surprising if it did not.

2.9 CONCLUSIONS

2.9.1 Introduction

Because this remedies claim is regarded as a test case, the submissions of counsel have been noted in more detail than might otherwise have been necessary. We have given careful consideration to all the matters put to us by counsel. We now state our conclusions on the main matters raised by them.

2.9.2 Claimants' reliance on Tribunal findings

The claimants are entitled to rely on all the Tribunal's findings as to facts and as to Treaty breaches by the Crown. We have discussed these in chapter 3. The Crown was silent on which of the Tribunal's findings it accepted as the basis for its view of the monetary range appropriate to redress the prejudice suffered by the Ngati Turangitukua hapu. Not all our findings of Treaty breaches were adverted to by Crown counsel. The Tribunal is, of course, required to have regard to all the Treaty breaches which it has held to be well-founded and to the reasons for such findings.

It is clear from the provisions of sections 6 and 8A of the Treaty of Waitangi Act 1975 that the Tribunal, whether exercising its power to make binding or non-binding recommendations, is acting subjectively. No doubt the Crown so acts when making its assessment of what it considers to be the appropriate redress in any particular claim. It necessarily follows that this can result in differences of opinion which, on occasion, may be quite marked.

2.9.3 Remedial nature of binding recommendations

Whether or not the power of the Tribunal to make binding recommendations may properly be characterised as exceptional, it is important to take into account the remedial nature of such power. It would be inconsistent with the judicial and legislative history of section 8A in particular, to ignore the purpose of the provisions enacted in 1988. In our opinion, these were, as the preamble to the 1988 Act made clear, essential in order to protect the position of Maori claimants and to provide safeguards to ensure such protection. A narrow or restrictive interpretation of the relevant provisions of the 1988 Act is to be avoided.

2.9.4 Relevance of Treaty principles

In its approach to remedies, the Tribunal should have regard to those Treaty principles which it has found the Crown to have breached. In assessing the relevance of such breaches, the Tribunal should have regard to the relative seriousness of the various breaches and to their prejudicial effect on the claimants.

2.9.5 A restorative approach

We agree with the Muriwhenua land Tribunal which noted, in expressing a preliminary view on the appropriate approach to relief, that, where the place of a hapu has been wrongly diminished, an appropriate response is to ask what is necessary to re-establish it.⁴² This suggests a restorative approach. We have noted a similar approach by the Ngai Tahu and Orakei Tribunals. We consider the various factors formulated by the Muriwhenua Tribunal to be relevant although not all will have equal weight.⁴³ It is apparent that some land should be restored to the hapu; this is conceded by the Crown. This, along with other measures, will be necessary to restore, to some degree, the rangatiratanga of Ngati Turangitukua in their ancestral homeland.

2.9.6 Need for a ‘direct’ relationship?

We have not been persuaded by Crown counsel’s submissions that there must be a ‘direct’ relationship between the historical wrong and the memorialised land before resumption can be ordered. Nor, in our view, was Crown counsel correct in suggesting that binding powers should only be exercised when some specific feature of the history of the asset means that it should be returned to Maori ownership. We need not rehearse here our reasons which we have given in some detail earlier.

2.9.7 Presence of direct relationship

But even assuming that Crown counsel’s submissions are correct, we consider they afford no barrier to the Tribunal, should we think it appropriate, in making a binding recommendation for the return of any specific memorialised property. This would be so whatever its condition, including any improvements, immediately before its transfer by the Crown to a State-owned enterprise. This is because the Tribunal considers that there is a ‘direct’ relationship between the historical wrongs recorded in our findings and all the land taken by the Crown in breach of Treaty principles. This includes all memorialised and all non-memorialised land. All such land was ancestral land, part of the papakainga of Ngati Turangitukua. All was of special importance and significance to the hapu. It still is. It was Crown action which radically and irretrievably transformed the physical character of this land. But for Ngati Turangitukua the land retains its unique character of ancestral land, of their papakainga. That is why they seek to have part of such land returned.

2.9.8 Relevance of value added prior to Crown disposal to an SOE

We do not accept that the statutory scheme of resumption prevents regard being had to added value and that this indicates that it is the particular features of the land itself that are important. The statutory scheme prevents regard being had to value added to

42. *Muriwhenua Land Report*, sec 11.4.4

43. *Ibid*

land by way of improvements only if such value was added since immediately before the date of the transfer of the land from the Crown to a State enterprise. The Tribunal is entitled to have regard, if it thinks appropriate, to the condition of the land and any improvements to it before that time.

2.9.9 Relativities

The Crown concedes that each claim should be settled on its merits but adds that equities as between different settlements are relevant.

When considering what remedies are appropriate the Tribunal should have regard to all well-founded breaches. But no such obligation rests on the Crown which may reject one or more such findings or may consider them to be less serious than does the Tribunal. Clearly this can result in significant differences as to the nature and extent of remedies thought appropriate by the Tribunal and the Crown respectively. This, in turn, could lead to different perceptions, possibly significant, in the perceived relationship with other settlements.

We were advised that the relativity of redress as between claimant groups is a matter of fundamental concern to the Crown. However, the Crown referred us to only three operative settlements. Of these, only one had been the subject of an investigation and report by the Tribunal. We infer that no other settlements were thought relevant by the Crown.

2.9.10 Benchmark settlements

Two of the three settlements to which we were enjoined to have regard were 'benchmark settlements'. In both cases the monetary value of the settlements was of the order of \$170 million. In the case of Waikato-Tainui, the people were subjected to raupatu resulting in loss of life and loss of extensive areas of land. Ngai Tahu, who occupied nearly half the land mass of New Zealand were rendered almost landless by the Crown. They were paid a derisory sum for their land. These events occurred over 130 years ago and have had long-lasting effect upon the respective iwi. The magnitude of the losses are so great and the prejudice of such lengthy duration that it is difficult for the Tribunal to make a meaningful comparison between them and the claim before us. It is obvious that many more people were affected by the prejudice to Tainui and Ngai Tahu than to the hapu of Ngati Turangitukua; so much so that a comparison of more than a very general nature is unrealistic. The Tribunal, perhaps understandably, received little assistance from the Crown as to the basis for any comparison between such disparate claims.

2.9.11 The Ngati Whakaue settlement

At first sight, it might be thought the Ngati Whakaue settlement could provide some sort of yardstick. Accordingly, we have given careful attention to the limited amount of information made available to us by the Crown and to Crown counsel's

submissions. In the result, for reasons we have earlier indicated, we have been unable to make a meaningful assessment of how that settlement relates to the totally different factual situation which has been comprehensively related in the *Turangi Township Report* 1995. It is accordingly of limited relevance.

2.9.12 A wider perspective

The Tribunal is, of course, acutely aware of the wider political and legal sphere within which it is operating. It is very conscious of the magnitude of the Crown's fiscal responsibilities. Few, if any, claimants, given the magnitude of the aggregate of all claims for redress under the Treaty of Waitangi Act 1975, can expect to receive total redress for the prejudicial effect of Crown Treaty breaches.

In considering what recommendations it should make in any given case, the Tribunal must have regard to all relevant circumstances. These will include the nature, extent, and effect of the well-founded Treaty breaches, and the additional evidence and submissions received during the hearing on remedies. In considering whether to make a binding recommendation for the return of memorialised land, the Tribunal will take into account the greater consequences that a binding recommendation of memorialised land would have for the Crown than would a non-binding recommendation for the return of Crown-owned land. We will be guided by the judgment of the Court of Appeal in *T v M* (1984) 2 NZFLR 462 delivered by Woodhouse P when he says at page 464, 'It is the principle of good common sense that the more serious the issue the greater should be the care used in assessing it.' As we said in our decision of 23 March 1997, we believe that, if the Tribunal follows this principle of good common sense in assessing the relevant evidence and submissions of counsel, it will be acting fairly to the parties and in accordance with its statutory obligations.

CHAPTER 3

THE CROWN'S TREATY BREACHES

3.1 INTRODUCTION

Counsel for the claimants made lengthy submissions incorporating a recital of the various Treaty breaches found by the Tribunal, together with extracts from the *Turangi Township Report 1995* supporting the findings. In addition, she included relevant extracts from the claimants' remedies evidence in respect of the various breaches. In this chapter we follow this pattern except for the inclusion of the claimants' remedies evidence. This is referred to in the next chapter along with the Crown evidence as to remedies.

3.2 BREACHES RELATED TO THE STATUTORY PUBLIC WORKS REGIME

3.2.1 Public Works Act 1928 and Turangi Township Act 1964

The Tribunal found that:

- (a) The claimants have been prejudicially affected by the provisions of the Public Works Act 1928 and the Turangi Township Act 1964, in that both Acts were and are fundamentally inconsistent with the basic guarantee given in article 2 of the Treaty of Waitangi that Maori could keep their land until such time as they wished to sell it at a price agreed with the Crown;
- (b) the Turangi Township Act 1964 permitted the Crown to acquire land compulsorily without direct consultation with the Maori landowners, thus contravening the Crown's duty to act in good faith and consult with its Treaty partner in respect of matters affecting Maori; and
- (c) the Turangi Township Act 1964 further breached the principles of the Treaty by excusing the Crown from the notice requirements of sections 22 and 23 of the Public Works Act 1928.¹

The Tribunal considered that the provisions were not merely inconsistent with the terms of the Treaty and relevant Treaty principles but they were tantamount to a unilateral abrogation of article 2. This was because they deprived the Maori owners of any protection of their Treaty rights under article 2.²

1. Waitangi Tribunal, *Turangi Township Report 1995*, Wellington, Brooker's Ltd, 1995, sec 16.7

2. Ibid

In commenting on the Turangi Township Act 1964, in particular we said that the Turangi Township Act 1964 provided for a form of local government for a township on Maori land, without any specific representation of Maori owners, and, in section 11, empowered the Crown to take by proclamation, without notice or any right of objection, an area of 1540 acres described in the second schedule (considerably greater than any figures mentioned in meetings with Ngati Tuwharetoa) and then dispose of it for the purpose of a permanent town – which the Ministry of Works had already begun to build anyway.³

3.2.2 Legislative provisions for return of surplus land

The Tribunal also found that the claimants were prejudicially affected by the omission of the Crown to make provision, when exercising its powers of compulsory acquisition under the Public Works Act 1928 and the Turangi Township Act 1964 over the claimants' land, for any such land no longer required for the public work for which it was taken to be returned to Maori ownership at the earliest possible opportunity, and with the least cost and inconvenience to those Maori owners and that such omission was inconsistent with the Crown's Treaty obligation under article 2 actively to protect Maori rangatiratanga over their ancestral land.⁴

3.2.3 Offer-back provisions of the Public Works Act 1981

It is convenient to consider at the same time the Tribunal's findings on the offer-back provisions of the Public Works Act 1981.

The Tribunal found that the claimants had been prejudicially affected by the offer-back provisions of sections 40, 41, and 42 of the Public Works Act 1981, which:

- (a) permitted the Crown, in certain circumstances, without consultation with former Maori landowners or their successors, not to offer surplus land back to such former owners;
- (b) permitted the Crown to retain the whole of the profit from the sale of such surplus land at current market value, whether sold back to the former Maori owners from whom the land was compulsorily taken or on-sold to a third party;
- (c) failed to require the Crown to make allowances for the circumstances surrounding the compulsory acquisition of the land from former Maori owners, including the need for the compulsory acquisition of the land or, if the use of the land was essential, whether it was necessary to acquire the freehold of the land;
- (d) permitted the Crown to offer to sell such surplus land at a price or on conditions which are manifestly in excess of the ability of the former Maori owners or their successors to meet;

3. *Turangi Township Report 1995*, sec 13.5.4

4. *Ibid*, sec 17.6

- (e) failed to require the Crown to have regard to the special circumstances of multiple Maori owners of such land and to seek to accommodate such circumstances; and
- (f) failed to permit the Crown to offer to sell the land to the wider hapu or tribal group to which the former Maori owners belong, if such owners are unable or unwilling to purchase surplus land offered to them by the Crown.

The Tribunal further found that the offer-back provisions of the Public Works Act 1981 are inconsistent with the Treaty obligation of the Crown to act reasonably and in good faith towards its Treaty partner and actively to protect the rangatiratanga of Ngati Turangitukua over their ancestral land.⁵

In the late 1970s the local people were faced with the wind-down phase of the Tongariro power development project. We noted in our report that lands no longer needed were transferred to the Department of Lands and Survey, and many sections in the town were disposed of. Once again, there was no participation by Ngati Turangitukua in this process. Some expected that these lands, which had not been used or were no longer required by the Ministry of Works, would be returned to them. When some offers to sell land back were made under the provisions of the Public Works Act 1981, local people were dismayed that the current market values of land taken from them in the late 1960s were beyond what they could afford. The issue of disposal of lands has compounded the sense of grievance.⁶

We next note two specific examples of the Crown's unjustified retention of land and the subsequent use of the offer-back procedures which prevented former Ngati Turangitukua owners regaining ownership of their land. The evidence as to the pony club and Turangitukua House graphically illustrated the problems facing former Maori owners when land was offered back at current market prices.

3.2.4 Pony club land

In the case of the pony club land, the Maori owners were paid \$21,965 for 120 acres (48.5ha), or \$183 per acre. In August 1973, 82 acres were declared surplus to the Tongariro power development's requirements. The Tribunal considered that the 82 acres (33.2ha) should then have been offered back. It was, however, proposed to transfer the 82 acres to the Department of Lands and Survey for \$39,000, or \$457.30 per acre, for the unimproved value. Instead of offering the land back, it was retained and transferred by the Crown to Landcorp in 1987. In 1994, Landcorp offered to sell to the former owners some 62 acres (25ha) for \$290,250, or \$4681.40 per acre. This compares with the \$183 per acre paid by the Crown to the Ngati Turangitukua owners in 1968.⁷

5. Ibid, sec 17.8

6. Ibid, sec 12.5

7. Ibid, secs 17.4.10, 17.7

3.2.5 Turangitukua House

The Turangitukua House property is three hectares (approximately 7.5 acres) in area. The Ministry of Works' project office was erected on this site, which was part of the Ohuanga North block of some 67 acres taken by the Crown in 1965. In November 1991, the Crown proposed to sell the three-hectare property to those thought by the Crown to be the previous owners or their representatives at the October 1990 Government valuation of \$450,000, of which \$275,000 was the land value. This amounted to \$36,666 per acre, which contrasts with the \$150 per acre paid to the owners by the Crown on the 1965 value. This was part of the industrial land which the Crown had undertaken to lease for 10 to 12 years and then return to the owners. The Crown failed to return the land.

In May 1993, the Crown made a formal offer to the trustees of Ohuanga 5B2C2 to sell the site for \$337,500, including goods and services tax. It is not known what proportion of this sum was for the land only. While it represented a considerable reduction on the earlier proposal to sell at \$450,000, it was clearly a price beyond the capacity of Maori owners of modest means to pay. In effect, it was an offer incapable of acceptance, as was the offer in respect of the pony club land.⁸

It also appeared from the evidence that, in a significant number of instances, surplus Crown properties were on-sold to third parties without first being offered back to the former owners or their successors. No evidence was called by the Crown as to the reasons for the former owners being bypassed.⁹

3.2.6 Compensation provisions in the Public Works Act 1928

The Tribunal also found that the Public Works Act 1928 failed adequately to recognise the relationship of Ngati Turangitukua to their ancestral land and to provide for adequate compensation for their loss of land, and that such failure was in breach of the Treaty obligation of the Crown adequately to recognise and protect the rangatiratanga of the claimants, who have thereby been prejudicially affected.¹⁰

The Tribunal was satisfied that the claimants received the compensation to which they were legally entitled under the Public Works Act then in force.¹¹ But as the finding indicates, the Tribunal concluded that the public works legislation was defective. The Tribunal considered that the relevant provisions afforded no appropriate recognition of the nature of Maori association with, and veneration for, their ancestral land. Nor did they recognise the Maori rights under article 2 of the Treaty which the Crown was under a duty to protect. The legislation did not allow for the fact that ancestral land was being taken compulsorily.

The Tribunal took into account the fact that the Crown was not obliged to build a construction town on the claimants' land. If it insisted on doing so, it need not have built a permanent town. If, for its own purposes, the Crown chose to dispossess the

8. *Turangi Township Report 1995*, secs 17.4.11, 17.7

9. *Ibid*, sec 17.7

10. *Ibid*, sec 19.7

11. *Ibid*, sec 19.5.5

claimants from their land, it was under a heavy obligation to compensate the Ngati Turangitukua people generously, and every effort should have been made to provide land in exchange. Suggestions from some owners that this might be done were rejected by the Crown. The Tribunal considered that the legislation was also defective in that it failed to take into account the fact that, by taking the land, it was effectively foreclosing on major farming operations which were steadily becoming more viable. In so doing, it seriously eroded the economic base of the community.¹²

The evidence also established that various whanau suffered losses which were not compensated for, in that no compensation was payable for the loss of a way of life that incorporated traditional aspects, and was particularly suited to large families with low incomes. We noted the experience of several families but considered they were not the only examples of owners not being left as well off as previously.¹³

3.3 BREACHES RELATED TO THE CROWN'S FAILURE TO PROTECT MAORI ARTICLE 2 RIGHTS

3.3.1 Crown's choice of township site

The Tribunal found that the Crown's policy decision to take the Maori-owned land at Turangi West for public works without first ensuring that no other land, in particular the Crown-owned Turangi East site, was available as an alternative was inconsistent with its Treaty obligation under article 2 actively to protect Maori rangatiratanga and that the claimants were thereby prejudicially affected.¹⁴

This Treaty breach by the Crown and the evidence supporting it has been considered in another context in chapter 2. We there indicate that the Crown elected to take the Ngati Turangitukua land compulsorily when a suitable site existed nearby which was already owned by the Crown and was available, had the Crown so chosen, as the site for the new township. In short, the Crown need not have taken the claimants' land.

3.3.2 Crown's failure to consider acquiring a leasehold interest in the township site

The Tribunal found that the Crown failed to give adequate consideration to the desirability, in the interest of protecting the rangatiratanga of Ngati Turangitukua owners over their land, of acquiring the leasehold instead of the freehold of the land taken for the township and the water supply reserve, that such failure was inconsistent with its Treaty obligation under article 2 actively to protect Maori rangatiratanga, and that the claimants were thereby prejudicially affected.¹⁵

12. Ibid, secs 19.6.8, 19.8.2

13. Ibid, sec 4.6

14. Ibid, sec 17.2.4

15. Ibid, sec 17.3.5

The day before Cabinet approved the proposals for the Turangi township, assembled owners were assured that the area of 200 acres required for the Industrial Area would be taken on temporary lease for 10 years. Apart from that land (which was eventually taken outright) it was made clear that the Crown intended to acquire the freehold. The available evidence indicated that Maori owners were given no choice in the matter. An important consideration appears to have been that the acquisition of the freehold was seen as necessary to ensure a permanent return for the Crown's expenditure. There was no evidence that the Crown considered what form of tenure would be in the best interests of the Maori owners and would best protect their rangatiratanga over their ancestral lands.¹⁶

3.3.3 Crown failure to honour undertaking to protect wahi tapu

The Tribunal found that the Crown failed in numerous instances to honour its undertakings to protect the wahi tapu of the Ngati Turangitukua people and, as a result, the Crown failed to act reasonably and in good faith towards its Treaty partners. Further, it failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty, and the claimants have been prejudicially affected thereby.¹⁷

Among the undertakings which Crown officials gave the Ngati Turangitukua people was an assurance that 'any sacred land would not be interfered with'. At a second meeting repeated assurances were given by a senior Ministry of Works official that wahi tapu would be respected and protected.¹⁸

In chapter 8 of our report, the Tribunal discussed a number of instances where wahi tapu were desecrated or destroyed. We confine our discussion here to two examples of the destruction of wahi tapu by the Crown. These are Te Puke a Ria and Nga Tuahu.

(1) *Te Puke a Ria*

The first concerns an old urupa called Te Puke a Ria, situated in what became part of the Industrial Area. It was a distinctive small hill rising some 17 metres above the surrounding land. The body of Ria lay buried on the summit. For years following the untimely death of her husband, Ria would climb to the top of the puke and call out and sing to her husband lying at Motiti, where he died. The hill was named for Ria. Arthur Grace told the Tribunal that Te Puke a Ria was a sacred place, cared for and respected by Ngati Turangitukua.

We were told by Ranginui Biddle of Ngati Hine, a hapu of Ngati Tuwharetoa, what happened. He was employed by a contractor who specialised in moving land with heavy machinery. He was working in the area close to the hill known as Te Puke a Ria. He approached the hill in his big D8 bulldozer. He then realised this was the place where our 'old kuia was buried'. Ranginui knew this place was 'very special'. He stopped his bulldozer and told his boss they should not be digging there because the

16. *Turangi Township Report 1995*, sec 17.3.2

17. *Ibid*, sec 4.11

18. *Ibid*, secs 4.7.3, 8.9.3

hill was an urupa. His boss told him the work had to go on. Everything had to be done quickly and on time. Ranginui refused to carry on with the destruction of the hill. He was instantly dismissed. Te Puke a Ria was flattened and the bones left somewhere on the industrial block. They have never been recovered. It appeared the Ministry had not imposed any obligation on the contractor to respect wahi tapu.¹⁹

(2) *Nga Tuahu*

In the early 1970s, some Ngati Turangitukua people discovered that tip operations had damaged several wahi tapu known as tuahu. Arthur Grace told the Tribunal that:

‘Tuahu’ is the name given to distinctive landmarks of our people. They are evenly-shaped conical hills built by the old people [ancestors]. Sometimes they are burial places, and at other times they are like altars. They were also used as places where the old people would bury something very special to them . . . They are very ancient, and very easy to recognise because of their shape. . . .

That place was very tapu. It had never been farmed for that reason. We all knew that the area was very special . . . Originally there were five tuahu . . .²⁰

We also learned from Mr Grace that the original site of the tip was a long way from the tuahu. There was an agreement with the Ministry that they would not do any digging in the area where the tuahu were located. When it was discovered that the diggers were working right where the tuahu were, one of the engineers, on request of Mrs Te Reiti Grace, intervened. By that time, there were three and a half tuahu left. But subsequently work must have been resumed as only three now remain. Mr Fearon Grace told the Maori Land Court in 1977 that the conical tuahu were used by tohunga for incantation to the gods. This indicated that only upoko ariki were buried there. The last burial, he said, could have been as many as 300 years ago.²¹

Arthur Grace told us that the desecration of their precious wahi tapu caused the people, particularly the old people, great distress. He added:

Those places are like important signposts to our history and mana. Many of the signposts have disappeared without trace. Other signposts are so changed as to be unreadable. We will never have the same access to our past as a result. . . .

When the Ministry of Works came to our area, we had kaumatua here who had great authority and many responsibilities. After the Ministry of Works took over, these people were reduced in status almost overnight because they no longer had any authority over what happened in our rohe. . . . This was very hard for those old people to accept and it affected them very badly.²²

In our chapter on wahi tapu we concluded as follows:

The desecration and destruction of wahi tapu was, in Maori terms, a significant part of the human cost of the construction of the Turangi township and the TPD [Tongariro

19. Ibid, secs 4.7.3, 8.1

20. Ibid, sec 4.7.3

21. Ibid; sec 8.3

22. Ibid, sec 8.9.4

power development]. When the Ministry of Works did respond, as in the case of the removal of bones from the urupa at Waiariki, it was only because there was no alternative. The Ministry was not proactive in efforts to protect wahi tapu. Local people had to make the effort to persuade the Ministry people to protect such sites. Their desecration and, in some cases, wholesale destruction symbolised the loss of rangatiratanga over their own lands experienced by Ngati Turangitukua.²³

3.3.4 Crown's failure to preserve an economic base for Ngati Turangitukua

The Tribunal found that the Crown, when deciding where the Tongariro power development's construction town should be sited, failed to give adequate consideration to the need to ensure that the Ngati Turangitukua hapu as a whole, and each whanau individually, was left in possession of as much of its land as possible. The Tribunal further found that, in deciding to construct a permanent township at Turangi, the Crown failed to ensure that it did so in such a way as would best preserve an economic base for Ngati Turangitukua and maintain their lifestyle and community. As a consequence, the Crown failed in its obligation actively to protect the rangatiratanga rights of Ngati Turangitukua under article 2 of the Treaty, and the owners were prejudicially affected thereby.²⁴

One effect of the compulsory acquisition of the claimants' land was that major farming operations arising from the aggregated use of substantial areas of multiply owned land, which were steadily becoming more viable, were destroyed by the construction of the town on the land. The viability of the land left in the possession of Ngati Turangitukua was adversely affected in part by its reduction in size and also by the removal of topsoil and the failure to restore soil and pasture after gravel and pumice excavations, and by flooding problems.

The situation was aggravated by the Crown failing to honour its undertaking that the maximum area it would need for the township was 1200 acres of which approximately 200 acres would be leased by the Crown and later returned to the Ngati Turangitukua owners. Thus, the maximum area of land to be permanently acquired was approximately 1000 acres, whereas the Crown, in fact, compulsorily acquired some 1665 acres.

But compounding all this was the fact that there was no compelling need for the Crown to have acquired any of the claimants' land. Either a permanent or a temporary township could have been conveniently constructed on nearby Crown-owned land.²⁵

Moreover, no consideration at all appeared to have been given by the Crown's town planners to the location of existing houses, to family relationships, or to the viability of the existing Ngati Turangitukua community related to Hirangi Marae.²⁶

23. *Turangi Township Report 1995*, sec 8.9.4

24. *Ibid*, sec 19.9

25. *Ibid*, sec 19.8.2

26. *Ibid*, sec 12.5

3.3.5 Crown's failure to mitigate the trauma and adverse social repercussions experienced by Ngati Turangitukua

The Tribunal found that the claimants were prejudicially affected by the failure of the Crown, as a result of inadequate consultation with Ngati Turangitukua people, to mitigate the trauma and adverse social repercussions which resulted from their activities in Turangi, and, as a consequence, the Crown failed actively to protect the rangatiratanga of its Treaty partner under article 2 of the Treaty.²⁷

In chapter 12 of our report, we considered at some length the evidence as to the impact on the Ngati Turangitukua people of the taking of their land and the construction of the new township upon it. After a lengthy discussion of the effect upon those who experienced the loss of, or removal from, their housing, we said:

Although we have focused on housing in this section, it is difficult to separate out this one issue from the many that impacted on Ngati Turangitukua families. This example illustrates the powerlessness that many felt then and still do. It also illustrates the failure of communication between local people and the Ministry of Works, and the general feeling of loss of control and disorientation. The immediate and often most painful impact on Ngati Turangitukua was the dislocation of households, the loss of lifestyle and livelihood, and the loss of the guarantee of a place on ancestral lands for their children. The pain of this loss is long term, and is being passed on to the next generation.²⁸

3.3.6 Failure of Crown to respect conservation values

The Tribunal found that the Crown failed in significant ways to act upon the high importance which it assured Ngati Turangitukua owners it placed on conservation values. As a consequence, the waterways and fishing are degraded and increased flooding has occurred. The Crown, therefore, failed to act reasonably and in good faith towards its Treaty partner and further failed to protect the rangatiratanga of Ngati Turangitukua under article 2 of the Treaty, and the claimants have been prejudicially affected thereby.

The desecration and destruction of wahi tapu was cited in support of the Crown's failure to observe conservation values. In addition, evidence was given of pollution of streams and rivers in the area. As a result of the township development the Tokaanu River had changed its course, to its detriment. Various species of native fish have disappeared as a result of the diversion of the river.²⁹

3.4 CROWN TREATY BREACHES AS TO CONSULTATION

The Tribunal concluded that at no stage, whether during the discussions which preceeded the Crown's decision to take the claimants' land, or during the

27. Ibid, sec 19.3.6

28. Ibid, sec 12.4.4

29. Ibid, sec 4.8.3

construction of the township, did the Crown fulfil its Treaty obligations to consult fully with Ngati Turangitukua. The Tribunal made two formal findings as follows:

3.4.1 Crown's failure to consult fully with owners before deciding to take their land

The Tribunal found that between March 1964, when the proposal to develop a township at Turangi was first mooted, and 21 September 1964, when the final plan was approved by Cabinet, the Crown failed in its obligation actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty. In particular, it found that the Crown failed to consult fully with the Maori owners of the land proposed to be taken before deciding to take the land for a township and, as a consequence, the owners were thereby prejudicially affected.³⁰

3.4.2 Crown's failure to consult fully with owners during township construction

The Tribunal found that the claimants were prejudicially affected by the failure of the Crown to keep Ngati Turangitukua people properly informed of its actions and intentions and by its failure to consult fully and effectively with those having mana whenua in the Turangi lands during the construction and development of the Turangi township. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner.³¹

The claimants' allegations that the Crown failed adequately to consult with them prior to the final decision, to take their land for the proposed township was considered at length in chapter 18 of our 1995 report. In brief, the Crown held only two meetings with Ngati Turangitukua owners. The first, on 24 May 1964, while generally informative, was based on an out-of-date plan and left a number of unanswered questions. Maori owners present:

were expected to comprehend a large and complex hydroelectric power scheme as well as the prospect of a new and permanent town on their lands, and to reach agreement on this proposed development at one meeting in one day. . . . No opportunity was given to consider the possible costs to the local community.³²

The claimants appointed a liaison committee of 12 owners and the trust board secretary to consult further with the Crown. Apart from a very brief meeting with the liaison committee immediately after the 24 May meeting, the Crown did not meet again with the committee until after Cabinet had authorised the building of the new township. At no time during the almost four-month interval between the 24 May meeting and the second meeting on 20 September did Crown officials meet or consult with the owners.

30. *Turangi Township Report 1995*, sec 18.10

31. *Ibid*, sec 19.3.2

32. *Ibid*, sec 12.5

The second meeting on 20 September 1964 occurred only because Arthur Grace senior made representations to the Minister of Public Works. At the Sunday meeting, various matters of concern were raised. By then it was too late for any adjustments, other than relatively marginal ones, to be made to what had become, without the prior knowledge of the owners, the formal plan. The next day, Cabinet approved the acquisition of the freehold of about 900 acres and the leasehold of some 200 acres of Ngati Turangitukua land for the new Turangi township.³³

The evidence in support of our second finding concerning the Crown's failure to consult fully with owners during township construction, fell into several categories. Thus, the evidence of many witnesses testified to the failure of the Ministry of Works officials to treat the kaumatua and kuia with the consideration and respect due to them. The Ministry and its agents insisted on pursuing their large-scale operations without adequate consultation with, or notice to, the people whose property they sought to demolish and officials were often reluctant to agree to proposals put to them by the people.³⁴

In chapter 12 of our 1995 report, we recorded the impact of the Ministry of Works and its bulldozers on the tangata whenua. The evidence revealed, in many instances, an apparent absence of sympathy and respect for people who were attached to their ancestral land. There was little evidence of adequate consultation or, all too often, any effective consultation, especially with those obliged to vacate their homes. This resulted in claimants being uprooted from their homes, sometimes with no, or insufficient, prior notice.³⁵ While sole owners were listened to on occasions, there was a marked lack of consultation with those who held land in multiple ownership and a virtual absence of negotiation.³⁶

3.5 CROWN FAILURE TO HONOUR ASSURANCES AND UNDERTAKINGS

3.5.1 Introduction

The Tribunal made a composite finding covering six discrete categories of failure on the part of the Crown to honour assurances and undertakings given to Ngati Turangitukua on which they relied in giving their approval in principle to the Turangi township being developed on their ancestral lands. Some of the undertakings which the Crown failed to honour affected the people generally, while others appear to have affected relatively few owners.

3.5.2 Undertakings of the Crown

The Tribunal found that:

33. Ibid, sec 18.9

34. Ibid, sec 19.2.2

35. Ibid, sec 12.3.7

36. Ibid, sec 4.8.2

(1) Finding (a)

*(a) The Crown failed by a wide margin to honour its undertaking as to the amount of land to be taken for the township and it resiled from its undertaking that the industrial area would be leased and returned to its owners after 10 years.*³⁷

The amount of land: At no time in meetings with the Maori owners did the Crown indicate that the area to be taken for the town would exceed 1200 acres. The assurance given on 24 May 1964 was that the town area would be some 1050 to 1150 acres. At the meeting on 20 September 1964, the range of area stated was 1000 to 1200 acres. Because this was close to the previous assurance given, it 'would have reassured the Ngati Turangitukua owners that, in the nearly four months since they had previously consulted with the Crown, the area required for the town remained virtually the same'.³⁸

The area of land taken for the Turangi township and associated works was 1665 acres of freehold land. This was a substantially greater area than the areas in the various undertakings or assurances given by the Crown, of which the maximum, including up to 200 acres leasehold, was 1200 acres. It is clear the Crown undertaking was not honoured.³⁹

The Industrial Area would be leased and returned to its owners after 10 years: The notice of 8 May 1964 from the Ministry's project engineer and the secretary of the Tuwharetoa trust board calling the meeting of 24 May advised that this would be a leasehold area 'of some 2/300 acres' for the temporary erection of workshops and so forth during the construction stages, after which the area shall revert to the owners. At the 24 May meeting a Ministry official confirmed that the proposed Industrial Area would revert to the owners when the Ministry's work was completed.

At the next meeting of owners on 20 September 1964 the chief project engineer confirmed that the land shown on the plan that the Ministry were proposing to lease would be:

a temporary industrial area for only ten years, but there would be provision for further industrial development for private industrial installations. Ministry of Works would take the land on a leasehold basis. . . .⁴⁰

Later at the same meeting the project engineer again confirmed that the Industrial Area was 200 acres and it would 'all be taken under lease'. He added that private industry could take a temporary lease and negotiate something more permanent with the owners.

The following day Cabinet approved the construction of the Turangi township which included 'the lease of some 200 acres'.⁴¹

37. *Turangi Township Report 1995*, sec 4.11, where all six categories of the failure of the Crown to honour assurances and undertakings are set out as in the paragraphs (a) to (f) that are considered here.

38. *Ibid*, sec 4.3.1

39. *Ibid*

40. *Ibid*, sec 6.5

41. *Ibid*, sec 6.6

The Tribunal in chapter 6 related the lengthy and detailed process by which the Crown reversed its clear and unequivocal undertakings given in 1964 that the Industrial Area would be leased for a term of 10 years and then returned to Ngati Turangitukua owners. Instead, the freehold of the land was compulsorily taken on 20 September 1971 by proclamation signed by the Minister of Works. An important reason for the taking was to maximise the Crown's return from its expenditure in connection with the new town.⁴²

The Tribunal concluded that the owners of the industrial land taken compulsorily by the Crown did not freely agree to such taking.⁴³

(2) Finding (b)

(b) The Crown singularly failed in numerous instances to honour its undertaking to protect the wahi tapu.

This finding has been discussed earlier at section 3.3.3.

(3) Finding (c)

(c) The Crown failed in significant ways to act upon the high importance which it assured owners it placed on conservation values. As a consequence, the waterways and fishing are degraded and increased flooding has occurred.

This finding has been discussed earlier at section 3.3.6.

(4) Finding (d)

(d) The Crown failed to honour adequately its undertaking to work in a cooperative and friendly manner with owners affected by the Ministry's works and to negotiate and consult with individual owners on important issues.

At the first meeting with officials on 24 May 1964, the Ngati Turangitukua people were assured of the Government's wish to cooperate with the owners. At the second meeting in September the chief project officer stated that it was the Ministry's wish to arrange the programme 'as far as humanly possible so that there would be a minimum of upset to those affected'. He later reiterated the Ministry's anxiety not to upset anyone but pointed out they would be in 'one very big hurry. When things have to be done in a hurry sometimes mistakes are made and sometimes people are upset.'⁴⁴

In chapter 12 of our 1995 report, we relate in some detail a variety of instances where, in their great haste to accomplish the mission, the Ministry failed to work in a cooperative and friendly manner. We concluded that:

Great distress was caused to innocent and largely defenceless people . . . The legacy of bitterness towards the Ministry of Works, which remains to the present day, is living testimony to the failure on too many occasions of Ministry officials to act with

42. Ibid, 6.7–6.12, in particular, sec 6.12.5

43. Ibid, sec 4.3.3

44. Ibid, sec 4.7.2

understanding and in a helpful way towards people whose lives they were so seriously disturbing.⁴⁵

(5) Finding (e)

(e) The Crown failed in some cases to honour its undertaking that, if owners had to move, advance warning would be given and they would be fully compensated. In a few cases, the Crown failed to meet its undertaking to give owners prior rights of purchase when selling sections or to make sections available to returning members of Ngati Turangitukua. In a number of cases, the Crown failed to meet its undertakings that owners affected by the works would be left as well off as before.

Sections not available to returning members of Ngati Turangitukua: The Tribunal concluded that:

many younger generation Ngati Turangitukua will not be able to live on family blocks. When Ngati Turangitukua want to return to Turangi, they have to purchase houses in the town. Those who might have been entitled to house sites but were unable to meet the conditions for a Maori Affairs housing loan in the 1960s and build within six months lost any entitlement for themselves and their descendants. It is seldom expected in other instances that building a house follows immediately after the purchase of land. This sort of pressure put on Ngati Turangitukua by the Ministry of Works was unreasonable. The argument based on a perceived shortage of house sites is not well grounded, because there were areas taken in Turangi . . . which were not used for township purposes and were later offered for sale. There are vacant sections in Turangi even today.⁴⁶

Prior right of purchase of sections not given: The evidence of Raymond Wade and Jim Rawhiti was to this effect.⁴⁷

Advance warning of demolition not always given: Some Ngati Turangitukua families were taken by surprise by the sudden arrival of bulldozers; for example, Eru, Church, and Wade whanau.⁴⁸

(6) Finding (f)

(f) The Crown failed to make provision for water to be reticulated to residents in Hirangi Road and later excluded such residents from within the township boundary without consultation or their consent, thereby making it more difficult for such residents to be supplied with water.

The evidence which is the basis for this finding is detailed in the 1995 report.⁴⁹ The Tribunal considered that the Hirangi Road claimants had a legitimate grievance at the Crown's failure to provide them with reticulated water and, further, at the Crown's action in subsequently excluding their properties from the Turangi township and

45. *Turangi Township Report 1995*, sec 4.7.2

46. *Ibid*, sec 12.4.4

47. *Ibid*, sec 4.5.1

48. *Ibid*, secs 4.4.4, 12.3.3, 12.3.4

49. *Ibid*, sec 4.9.1

thereby making it less likely that water would be reticulated to them by the Taupo County Council.⁵⁰

As a result of the findings in the foregoing paragraphs (a) to (f) inclusive (sec 3.5.2(1)–(6)), the Tribunal found that the Crown failed to act reasonably and in good faith towards its Treaty partners and, further, failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty and the claimants have been prejudicially affected thereby.

3.5.3 Crown's failure to honour its undertakings and owners' lack of informed consent

The Tribunal found that the taking of land for the Turangi township under the Public Works Act 1928 and the Turangi Township Act 1964 was, both in fact and in law, a compulsory acquisition. In particular, it found that:

- (a) the Crown failed in whole or in part to honour many of the undertakings that it gave to the Ngati Turangitukua owners, in reliance on the fulfilment of which the owners approved the Turangi township being developed on their ancestral land;
- (b) as a consequence, the owners' approval was undermined and negated; and
- (c) the owners did not give their informed consent or agreement to such non-fulfilment of the Crown's undertakings or to the subsequent taking of their land by the Crown pursuant to the said Acts.

As a result the Tribunal found that:

the Crown failed to act reasonably and in good faith towards its Treaty parties and, further, failed actively to protect the rights of Ngati Turangitukua under Article 2 of the Treaty, and the owners have been prejudicially affected thereby.⁵¹

The evidence discussed in chapter 4 of the 1995 report establishes that various important conditions, that is to say, undertakings or assurances, which the Crown represented would be fulfilled were not fulfilled. As a consequence, the Crown proceeded, not, as its counsel submitted, on the basis of 'agreement, informed consent and consensus', but on a basis which differed in many very material respects from that on which it had undertaken to the owners it would proceed. Far from agreeing, the claimants protested vigorously at the failure of the Crown to honour its undertakings, on which they had relied, and of which many were important inducements to the claimants' approval of the establishment of a town at Turangi. In such circumstances, it cannot be held that the owners were 'willing sellers' or that they gave informed consent to what the Crown actually did, as contrasted with what it had undertaken it would do.

50. Ibid

51. Ibid, sec 20.2.6

3.5.4 Crown failure to act in accordance with its duty of partnership

The Tribunal found that:

the claimants were prejudicially affected by the failure of the Ministry of Works, acting on behalf of the Crown, to deal with Ngati Turangitukua people during the construction of the Turangi township in a manner that paid them the respect due to their mana as tangata whenua. In particular, the Ministry failed to recognise and protect the sensibilities of kaumatua. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner.⁵²

In chapter 12 of our report on the impact upon the people of the construction of the township we noted that Ngati Turangitukua were the ‘host community’. And that:

They were and are the tangata whenua. The claimants told us . . . that the Ministry of Works did not respect their mana and rangatiratanga . . . They had to adjust to the arrival of a large number of newcomers – people with different lifestyles – who came to live among them, and traditional social structures, leadership styles, and patterns of social control were stretched to breaking point. There were tensions between the newcomers and the host community, and there was social disruption within the host community itself. The elders of Ngati Tuwharetoa, both individually and collectively through the Tuwharetoa Maori Trust Board, strove to protect Maori interests. But everyone knew that the real power in the community had shifted to the Ministry of Works, which was backed by the Public Works Act 1928.⁵³

3.6 A CAUTIONARY NOTE

The foregoing references to the evidence relating to each of the Crown’s many and various Treaty breaches is necessarily very brief. Given the length of the 1995 report – some 400 pages – they can for the most part be illustrative only. A full appreciation of the impact of the Crown’s entry upon Ngati Turangitukua’s ancestral land, its compulsory acquisition and rapid transformation into a new township, and of the consequences for the hapu and its members, can only be gained by reading the report itself.

52. *Turangi Township Report 1995*, sec 19.2.3

53. *Ibid*, sec 12.5

CHAPTER 4

REMEDIES EVIDENCE FOR CLAIMANTS AND THE CROWN

4.1 INTRODUCTION

The Tribunal in recording its 13 findings of breaches of Treaty principles by the Crown commented:

Most stem from a failure actively to protect the rangatiratanga of Ngati Turangitukua over their ancestral land . . . At the heart of this claim lies the failure of the Crown to honour many of the undertakings and assurances it gave to the owners . . .¹

The Tribunal also stated in respect of possible remedies:

Clearly the claimants are entitled to be compensated for the losses and injuries they have suffered. The return of Crown land would, no doubt, be a central element in such compensation.²

The Tribunal also suggested throughout its report that there were matters such as destruction of wahi tapu and environmental degradation, which contributed to the loss of mana and rangatiratanga of Ngati Turangitukua and which cannot be compensated for in monetary terms.

In this chapter, we first outline the claimants' views on remedies, based on the framework set out in the third amended statement of claim. We then consider the evidence submitted by the Crown. In the final section, we return to the central issues of mana and rangatiratanga, in summing up the evidence presented. In the following chapter, we address the question of approaches to assessment of the remedies sought by claimants.

4.2 THE EVIDENCE FOR THE CLAIMANTS

4.2.1 Introduction

In her closing submissions, claimant counsel set out the basis for the remedies sought in this claim:

1. Waitangi Tribunal, *Turangi Township Report 1995*, Wellington, Brooker's Ltd, 1995, sec 21.5

2. Ibid, sec 21.6

The overriding principle is that the purpose of remedies is twofold: to compensate for past wrongs and remove the prejudice by restoring the claimants to the position where they are freely able to exercise their rangatiratanga in the future.³

She also suggested that ‘prejudice’ should be interpreted broadly to embrace ‘spiritual, cultural and economic consequences’. Although the Turangi township claim could be described as a ‘modern claim’, since the events complained of occurred little over 30 years ago and within living memory, it was also a hapu-based historical claim:

As with other historical claims the ‘ripple’ effect of the loss of land and rangatiratanga has had the most profound impact, with resulting social, cultural, spiritual and economic prejudice. And, as with other historical claims, the restoration of rangatiratanga and the re-establishment of a land/economic base is required in order to remove the prejudice. The rationale for the restoration approach is . . . founded in the Treaty.⁴

The first claim in respect of the Turangi township, dated 25 December 1989, was brought in the name of Mahlon Nepia on behalf of the Ngati Turangitukua hapu.⁵ Mr Nepia, who from the start has been responsible for managing the claim on behalf of the hapu, stressed in his evidence that from the outset the claim was to be run on a hapu basis. His evidence establishes that the hapu has been regularly consulted through regular claim meetings at Hirangi Marae and through the mail. All important decisions have been made through the Hirangi Marae Committee (also known as the Ngati Turangitukua Maori Committee), which is the controlling body of the hapu.

Mr Nepia explained in his evidence how what he characterised as the ‘remedies package’ was arrived at after full discussion between members at hapu meetings. The remedies sought are those set out in the third amended statement of claim. We were told that the planning of the package was necessarily fairly general at this stage. A strategic planning exercise will be undertaken as to how the hapu might realise its goals when it learned what remedies would be obtained.⁶

We now set out the recommendations sought by the hapu in its third amended statement of claim (see app 1), with the main points made by Mr Nepia by way of explanation.

4.2.2 The return and establishment of Turangitukua House

Turangitukua House is, by universal agreement, the first on the list of properties that the hapu seeks to have returned.⁷ The statement of claim describes the site as ‘imbued with the sacred memory of Te Puke a Ria’. This property is of prime importance to the hapu because it symbolises Te Puke a Ria, the wahi tapu destroyed by the Ministry

3. Document E13, para 3.4.1

4. Ibid, para 3.5.3

5. Claim 1.1(i)

6. Document E3, in particular, para 51

7. Claim 1.1(ac), paras 2–3

of Works. The graphic circumstances of the wilful destruction of this urupa are recounted in our report.⁸

The hapu cannot replace Te Puke a Ria and the tuahu and the other wahi tapu destroyed by the Ministry of Works, but the people can rebuild the hapu culturally.

The aim of the hapu is to rebuild Ngati Turangitukua's mana and spiritual identity by establishing Turangitukua House as a centre for the hapu. The centre is envisaged as being the headquarters for The Ngati Turangitukua Charitable Trust (see sec 4.4.5). From this centre, Mr Nepia said, the hapu would seek to deliver the services to its people made possible by a satisfactory settlement. These services would include administering education grants and scholarships and probably also programmes directed at the old people. It would be used as a conference centre for the increasing number of issues the hapu is now required to deal with. And, very importantly, it would be a learning and cultural centre to complement their marae. He also sought 'monetary compensation in this regard' but no amount was specified. However, funds to refurbish this property would obviously be needed.⁹

Address:	130 Atirau Road
Legal description:	CT34C/191 section 1 S035736
Area:	2.9827 hectares

4.2.3 Preservation and maintenance of wahi tapu

The destruction and desecration of wahi tapu was the source of significant grievances for Ngati Turangitukua which cannot easily be compensated for in monetary terms.¹⁰ Recognition of the loss of the wahi tapu, Te Puke a Ria, has been acknowledged in the request for the return of the property referred to as 'Turangitukua House'. There has also been some recognition of wahi tapu in the ancillary claims process, which is reviewed below. There are also significant wahi tapu within lands administered by the Department of Conservation and the Taupo District Council. In his submission, Mr Nepia stated that the issue of monetary compensation for destruction of wahi tapu had been discussed among Ngati Turangitukua, specifically at a hui on 11 May 1996:

The answer was an emphatic no. People didn't think it was right to ask for money to compensate a spiritual loss. You cannot put a dollar figure on what a wahi tapu is worth.

The hapu is in a very awkward situation now in respect of its wahi tapu. The township has consumed many of these places. Some sites escaped the bulldozer, but there is no longer security from trespass and tampering . . .

We cannot replace the wahi tapu, but a practical thing we can do is restore and protect what is left.¹¹

8. *Turangi Township Report 1995*, secs 4.7.3, 8.1, and see preceding ch 3

9. Document E3, paras 52–53

10. Claim 1.1(ac), para 4

11. Document E3, paras 54–56

The Tribunal accepts that this is a sensible and pragmatic attitude and notes that there are already provisions in the Historic Places Act and Resource Management Act 1991 to preserve and protect wahi tapu.

Mr Nepia confirmed paragraph 4.2 of the statement of claim that financial assistance is sought to facilitate the rehabilitation and on-going maintenance of wahi tapu sites which are still in existence. We consider this in chapter 5.

A specific instance given by Mr Nepia was a beautification programme of the whole area surrounding the three remaining tuahu. This would involve the planting of native trees, clearing of scrub, and relocation of the adjacent rubbish tip.¹²

4.2.4 Return of residential property so that Ngati Turangitukua people can be restored to ownership of residential land in Turangi

Ngati Turangitukua seek the return, without cost to the claimants, of some 59 residential properties that are owned or were formerly owned by a State-owned enterprise and that have memorials on their titles pursuant to section 27B of the State-Owned Enterprises Act 1986.¹³ These are listed in schedule 3(a) to the statement of claim. Another five properties on this schedule are owned by the Electricity Corporation of New Zealand with no memorial on their titles.

Mr Nepia stated that the aim of the hapu is to make it possible for all the whanau of Ngati Turangitukua to own a piece of ancestral land, to have a papakainga again. At present, he said, there are many Ngati Turangitukua people living in Turangi who cannot afford to own property there. He also claimed that there are also hapu members who live elsewhere who would come home, if there were family land for them to return to.

In order to ensure the benefit of settlement was distributed fairly to their whanau, and also to leave sufficient resources intact for the hapu as a whole, it was decided that a realistic proposal would be to give people the opportunity to buy back property from The Ngati Turangitukua Charitable Trust, which is described below. The trust would assist people to buy homes by operating a loan scheme on concessionary terms. In this way, it was hoped that hapu members would be able to buy their own homes preferably located on their ancestral family land.¹⁴

4.2.5 Kaumatua housing

As described in schedule 3(b) to the statement of claim, there are five such properties, two on Mawake Place and the others in Takinga Street, all adjacent to Hirangi Marae.¹⁵ The hapu is anxious to take over ownership so that it can manage the kaumatua housing itself and make suitable arrangements for the old people.¹⁶

In supplementary submissions, the Crown stated:

12. Document E3, paras 56–57

13. Claim 1.1(ac), para 7; see also schedule 3(a)

14. Document E3, paras 58–61

15. Claim 1.1(ac), schedule 3(b); see also para 7

16. Document E3, para 62

With regard to the Kaumatua[a] flats, under current government policy, the ‘discounted price’ is $\frac{2}{3}$ of the ‘special’ valuation which is a lower valuation. The purchase price is financed by a suspensory loan of \$5,000 for each kaumatua flat, with the remainder on a normal loan to be repaid over 15 to 20 years . . .

The Office of Treaty Settlements has been advised that the Marae Trustees want the Kaumatua flats and the Kokiri Centre returned as part of the claim settlement. . . . [The options are still open, but] if the properties are to be transferred as part of the settlement, the Office of Treaty Settlements will, under current Crown policy, have to purchase the properties at full current market value in order to transfer them as part of the claim settlement.¹⁷

The kaumatua housing properties are (see fig 1):

Address	CT	Legal description	Area
35 Mawake Place	CT28A/501	Lot 5 DP32367	1467m ²
37 Mawake Place	CT25A/456	Lot 4 DP32367	1217m ²
33 Takinga Street	CT24D/388	Lot 1 DP32367	744m ²
33A Takinga Street	CT28A/500	Lot 2 DP32367	809m ²
Takinga Street	CT24D/390	Lot 3 DP32367	986m ²

4.2.6 Compensation for Ngati Turangitukua to establish a ‘start fund’

The statement of claim states that:

Ngati Turangitukua seek a cash settlement for the purpose of investment and development of an economic base that will enable the *hapu* to restore and enhance the education, training, health, economic wellbeing and cultural strength of the people.¹⁸

In confirming this, Mr Nepia referred to the need for the hapu to become fully integrated in the commercial life of Turangi. Building up a property portfolio and establishing businesses that return a profit for the hapu is seen as a key long-term feature in hapu planning. A ‘start fund’ is seen as essential to enable the hapu to build up income-producing assets.¹⁹

4.2.7 Return to the hapu of properties of note so that, as tangata whenua, Ngati Turangitukua can participate fully in the commercial life of Turangi

All but three of these properties bear section 27B memorials and are owned or were formerly owned by State-owned enterprises. The memorialised properties are listed

17. Document E17, paras 6, 8–9

18. Claim 1.1(ac), para 9

19. Document E3, paras 63–66

in schedule 4(a) and the three Crown-owned properties in schedule 4(b) to the statement of claim and are shown in figure 1.²⁰

Mr Nepia stated that these properties all have a high profile in the town. Some would return a steady income and others have development potential. Their ownership by Ngati Turangitukua would, he said, mean that the hapu would begin to be seen at the centre of commercial life in the town, rather than at the fringes or completely invisible.²¹

We note first the memorialised properties in schedule 4(a) to the statement of claim.

- (a) The *Iwiheke Place* properties comprise a group of buildings which, prior to their transfer on 16 November 1990 by the Crown to the Electricity Corporation of New Zealand, were used as a hostel for Electricity Department workers. It has potential for use as a hostel or for a variety of other purposes. The total area is 1.0193 hectares, and the land is in four certificates of title:

CT38A/43	Lots 87, 88, 89	DP29124	1913 m ²
CT38A/44	Lots 96, 97, 98	DP29124	1849 m ²
CT38A/45	Lots 82, 83, 84, 85, 86, 104	DP29126	3501 m ²
CT37B/422	Lots 99, 100, 101, 102, 103	DP29127	2930 m ²

- (b) *Tautahanga Road (Telecom exchange)*: This property, immediately prior to its transfer by the Crown to a State enterprise on 5 December 1989, was vested in the Crown for an automatic telephone exchange. It is said to be in a prime residential area of Turangi. It is near the town centre. Mr Nepia suggested it has the potential to be developed in a range of ways.²² The legal description is CT36C/225, lot 90 DP28176, with an area of 1171 square metres.
- (c) *33 Town Centre (post office building)*: This property, immediately prior to its transfer to a State enterprise, New Zealand Post Limited, was vested in the Crown for a post office. The property is thought to be a good long-term investment being in an excellent location in the town centre.²³ The legal description is CT33D/241 lot 26, DP27579, an area of 1070 square metres.
- (d) *Ohuanga Road vacant lot*: This land was a vacant lot at the time it was vested by the Crown in a State enterprise, Landcorp Management Services Limited, on 16 May 1991. It adjoins the property next referred to at 25 Ohuanga Road. Mr Nepia states that it may have development potential. Alternatively, the hapu may wish to enter into arrangements with the Taupo District Council for it to be retained as a public space.²⁴ The legal description is CT39D/500 lot 1, DP32621, with an area of 4072 square metres.

20. Claim 1.1(ac), schedule 4(a); see also para 8

21. Document E3, para 67

22. Ibid, para 68(b)

23. Ibid, para 68(c)

24. Ibid, para 68(d)

Figure 1: Properties 'of note' and kaumatua houses

- (e) *25 Ohuanga Road*: This property, immediately prior to its transfer to a State enterprise, New Zealand Timberlands Limited, was vested in the Crown for forestry purposes. It had been used as a hostel for Forest Service employees. It is in the vicinity of the town centre, adjacent to the vacant lot described above. It has the potential for development for accommodation or related purposes. The legal description is CT38D/915 lot 2, DP32621, with an area of 3.6573 hectares.
- (f) *Pony club land*: This land, prior to its being vested in the State enterprise Land Management Services Limited, was leased by the Crown for grazing purposes. The land has been the subject of a long Public Works Act wrangle between the claimants and the Crown. It is prime property on State Highway 1 as yet undeveloped. It is near to motels and could be developed for accommodation or other commercial uses. As a signpost to Turangi, Mr Nepia suggests it would profile the hapu's role there as tangata whenua.²⁵ The legal description is CT39D/483 section 70 Town of Turangi sections 1 and 2, SO28505 and sections 1 and 2, SO28506, with an area of 34.6702 hectares.

The foregoing are all section 27B memorialised properties.

We now refer to the three Crown-owned properties in schedule 4(b) to the statement of claim.²⁶

- (a) *33 Turanga Place*: This is the Department of Conservation headquarters which Mr Nepia considers so long as it remains as such should be a good long-term rental property.²⁷ The legal description is GN773733 section 74 Town of Turangi, with an area of 5908 square metres.
- (b) *187–189 Tautahanga Road*: This was a former hospital which is currently an ambulant care centre. It is land-banked by the Crown. The legal description is CT38B/684 lot 51, DP29638, with an area of 1.3327 hectares.
- (c) *5 Wharekaihua Grove*: This is Crown owned and currently a recreational space maintained by the Taupo District Council. Mr Nepia suggested it could continue to be kept as a recreational space or alternatively developed for residential purposes.²⁸ This property is also landbanked by the Crown. The legal description is CT43B/431 lot 58, DP34051, with an area of 2428 square metres.

4.2.8 Return of Crown-owned land and land owned or formerly owned by a State-owned enterprise in the Industrial Area

Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of the following five properties in the Industrial Area.²⁹ Each has a memorial over its title pursuant to section 27B of the State-Owned Enterprises Act 1986.

25. Document E3, para 68(f)

26. Claim 1.1(ac), schedule 4(b)

27. Document E3, para 68(g)

28. Ibid, para 68(i)

29. Claim 1.1(ac), para 5; see also doc E3, paras 67–68

Address	CT	Legal description	Area
24 Tukehu Street	CT39B/619	Lot 9, DP28407	1.3628ha
135 Atirau Road	CT34B/571	Lot 12, DP61544	8545m ²
16 Tukehu Street	CT36A/464	Lot 10, DP28407	3966m ²
57 Tukehu Street	CT39D/774	Lot 31, DP28407	4029m ²
65 Atirau Road	CT39D/775	Section 69, Town of Turangi	2.0335ha

Ngati Turangitukua also seek the return, in fee simple without cost to the claimants, of the following nine Crown-owned properties in the Industrial Area.³⁰

Address	CT	Legal description	Area
165 Atirau Road	CT34B/564	Lot 1 on part lot 3, DP61544	1.0426ha
11 Dekker Drive	CT34B/564	Lot 2 on part lot 3, DP61544	1.7020ha
175 Atirau Road	CT42D/699	Lot 11, DP61544	2.4590ha
145 Atirau Road and Dekker Drive	CT34B/563	Lot 1, DP61544	23.2942ha
	CT34B/565	Lot 4, DP61544	1.9461ha
	CT34B/568	Lot 7, DP61544	2.0727ha
112 Atirau Road	CT42C/437	Section 1, SO35426	2600m ²
150 Atirau Road	CT44A/734	Section 81, Town of Turangi SO34161	2556m ²
29 Atirau Road	Proc 2936	Part Ohuanga North 5A, block III, Pihanga survey district	4.9665 ha*

* The area given in the Crown schedule E16(d) is 4.9665 hectares but the 1995 valuation roll lists 4.1745 hectares, see document D17(b) (VNZ property information).

The location of these properties is shown in figure 2.

Claimant counsel described the Industrial Area as ‘a special case because of the Crown’s undertaking to lease the 200 acres that were required’. In schedules 2(a) and 2(b) to the third amended statement of claim, all the ‘remaining Crown and SOE land in the Industrial Block is listed’. The claimants sought ‘the return of all the land now in Crown or SOE ownership, together with compensation to enable them over time, to buy the balance of the land’.³¹ A particular grievance was the Crown’s breach of the original undertaking to lease the Industrial Area by subsequently taking it under the Public Works Act. Mr Nepia stated:

If the Crown had not breached its undertaking to lease the land, we would still own it. More than that ... our ancestral connection with that land is of particular

30. Claim 1.1(ac), para 5.2; see also schedule 2(b)

31. Document E13, para 4.6.3.1

Figure 2: The Industrial Area

significance . . . When we lost ownership of that land, we lost control and we couldn't stop the Ministry of Works destroying tapu areas. We want ownership of the land back so that we can once again resume our proper role as kaitiaki of land.³²

Mr Nepia explained that Ngati Turangitukua also saw development opportunities which might create employment and strengthen the hapu economy in future, if these lands were returned.

In paragraph 5.3 of their statement of claim, the claimants state that environmental degradation has occurred on this land and Ngati Turangitukua 'seek warranties from the Crown as to liability for environmental hazards which may subsequently emerge and undertakings as to liability for remedying currently apparent hazards'.³³

In evidence, Arthur Grace told us why it is important for Ngati Turangitukua 'to get back the title to the land that was in the industrial area'. He referred to the fact that the Crown promised the hapu that the Industrial Area would be leased from Ngati Turangitukua and 'would not be taken'.³⁴ In this connection we refer to the following passage from our report:

- It is clear that at both the May and the September [1964] meetings, the owners were assured in quite categorical terms that the industrial area (by September estimated to be about 200 acres) would be taken under lease for 10 years and then revert to the owners.
- Cabinet, on 21 September 1964, approved the construction of the Turangi township including 'the lease of some 200 acres'.
- The Crown's undertaking to the Ngati Turangitukua owners that it would lease the industrial area for a term and then return it was not honoured by the Crown. On the contrary, the land required for such purposes, amounting to some 189 acres, was taken compulsorily under the Public Works Act 1928.³⁵

Mr Grace explained that a significant portion of what is now called the Industrial Area was special to the hapu. In addition, the whole hill where the water supply reserve is now located was tapu. The hill is Kohatu Kaiaora and includes the site of Hinenamu's cave, among other wahi tapu, as well as springs which are the source of the Tokaanu River, te awa tapu.³⁶ Mr Grace concluded:

What I am trying to establish is that the importance to our hapu of getting back the industrial block is not simply because the Crown acted so badly in breaking their word about that land. It's also because there was an underlying reason why Ngati Turangitukua were so reluctant to sell the land in the first place, namely because a good proportion of it was regarded as tapu. It was our responsibility as the ancestral owners of the land to do everything we could to keep the land in hapu hands, and look after it.

32. Document E3, para 69

33. Claim 1.1(ac), para 5.3

34. Document E4, paras 27–28

35. *Turangi Township Report 1995*, sec 4.3.2

36. *Ibid*, sec 8.7

We lost that struggle, but the significance of the land to us is ongoing. We regard it as the cornerstone of our turangawaewae, and it is very important to us that we gain ownership of it.³⁷

In speaking of the land in the Industrial Area, Mr Nepia said that the hapu wanted to promote development of the area for the good of the people, but that cannot be done at the expense of the tapu areas. Only the people of Ngati Turangitukua know which parts of the land are tapu.

Mr Nepia described the present condition of part of the Industrial Area as follows:

For the sad truth is that parts of the Industrial Block are a real mess. For instance, the former Ministry of Works' workshop . . . is an absolute disgrace. When the MOW moved out, they took what they wanted with them and just left the site as it was. Metal, timber, waste fuel and oil were left behind. Compressed stone allows rainfall to pond and mix with the waste. The site is elevated above the Waipapa Block flats, and the Hangarito Stream drains from this area, and then flows into Lake Taupo via the man-made diversion. The building itself has fallen into disrepair and the whole place looks a sorry site. Adjacent to this site are other sites vacated by the MOW. Large concrete slabs stay embedded in the ground. The ground itself is compressed stone and rock. The site isn't much use for anything unless it is cleaned up first. Given the potential for toxicity in the debris left behind, we calculate that the clean-up operation could be an expensive one. That is why we have made the point that the clean-up liability should remain with the Crown.³⁸

No further details were provided of the nature and extent of any contamination. We discuss the question of the liability of the Crown further at section 5.4.6.

4.2.9 Compensation to enable the purchase of land in the Industrial Area no longer in Crown or SOE ownership

The claimants seek monetary compensation to enable the purchase by Ngati Turangitukua over time of such land.³⁹ By land in 'SOE ownership', we infer that the claimants are here referring to land which does not have a memorial on the title pursuant to section 27B of the State-Owned Enterprises Act 1986.

4.2.10 Change of ownership of reserve properties

Paragraph 10 of the statement of claim states:

Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of the ownership of all recreation reserves owned by the Crown in the claim area in recognition that Ngati Turangitukua are *tangata whenua* of Turangi and *kaitiaki* of the natural and spiritual environment there, provided that such reversion may be subject

37. Document E4, para 31

38. Document E3, para 73

39. Claim 1.1(ac), para 6

to any special conditions required to guarantee the maintenance of conservation values as mutually agreed upon between the Department of Conservation and the *hapu*.⁴⁰

We consider this proposal in chapter 5.

4.2.11 Regime for the management of conservation lands

Paragraph 11 of the statement of claim states: ‘Ngati Turangitukua seek a recommendation that the Department of Conservation give effect to any future *hapu* management plan in the management and development of conservation lands in the Ngati Turangitukua *rohe*’.⁴¹ We consider this at section 5.4.7.

4.2.12 Ancillary claims

Paragraph 12 of the statement of claim states: ‘Ngati Turangitukua seek a recommendation that Land Information New Zealand (LINZ) prepare a works programme detailing the outstanding ancillary claims and the time frame within which they will be remedied’.⁴² This is discussed in section 5.4.8.

4.3 THE EVIDENCE FOR THE CROWN

4.3.1 Introduction

Crown counsel in his opening submissions, recognised ‘that redress is required to fairly and properly settle the Treaty claims of Ngati Turangitukua’, and ‘that the return of some land to the claimants will be an essential aspect of any redress package’.⁴³ Crown counsel also urged constraint in assessing the quantum of redress, noting that this claim involved only one *hapu*, a relatively small number of people, and some compensation had already been paid under the provisions of the Public Works Act. The evidence for the Crown included: an analysis of the *hapu* land base, size of *hapu*, and number of households affected, presented by David Alexander; a social and economic impact assessment report, presented by Dr Nick Taylor; and reports prepared by Brent Parker on compensation issues. The intention of this Crown evidence was not to contest any findings in the Tribunal’s report, but to provide further perspectives on matters that might be relevant to assessment of remedies. We comment on their evidence in following sections.

4.3.2 The evidence of David Alexander

David Alexander submitted a detailed analysis of Maori Land Court records for all the lands in the Turangi district in which Ngati Turangitukua had interests. He stated

40. Ibid, para 10; see also doc E3, paras 74–75

41. Claim 1.1(ac), para 11

42. Ibid, para 12

43. Document E12, p 1

the purpose of his evidence was ‘to provide some measures of the state of Ngati Turangitukua just prior to the development of Turangi Township’, and that his focus was ‘on land ownership and land use’.⁴⁴ In his review of the ownership of eight relevant blocks (Hautu 2 and 3, Ohuanga North 5, Waipapa 1, Tokaanu B1, Tokaanu Township, Waiunu, and Okahukura 3) Alexander concluded that the land base awarded by the Native Land Court to Ngati Turangitukua comprised not less than 11,664 acres.⁴⁵

Claimant counsel submitted:

It is not within the scope of this hearing to address the effects upon whanau and hapu of the individualisation of title carried out under the aegis of the Native Land Court system . . .⁴⁶

The Tribunal concurs with this view. The remedies sought are in respect of the actions of the Crown in taking lands of Ngati Turangitukua and other related matters, a process begun in 1964, and which proceeded under the Turangi Township Act 1964 and Public Works Act 1928. The area involved was described in schedules to the 1964 Act, although some lands outside the scheduled boundaries were also taken. The Tribunal also acknowledged in its report that compensation was paid, within the restrictive provisions of the Public Works Act, to individual owners of the Maori lands taken. There is no need for the Tribunal to review the grounds for the allocation of owners, the boundaries, or subsequent partitions of blocks in titles originally investigated by the Native Land Court. However, an understanding of the ownership lists in the various blocks has been of assistance to Ngati Turangitukua in compiling a list of beneficiaries for The Ngati Turangitukua Charitable Trust.

In his analysis of ownership lists in the Waipapa and Ohuanga North blocks that were in multiple ownership and taken for the Turangi township, Alexander concluded that ‘a rough estimate’ of the total Ngati Turangitukua population in 1964 would be between 1100 and 1500 people.⁴⁷ His figures were derived from the numbers of owners listed, with a multiplier between 4.5 and 5.5 to account for children and other descendants who had not succeeded to interests in those blocks. He also reviewed contemporary plans and aerial photographs, related these to title information, and identified 29 Maori households in the Turangi township area in 1964. On this basis he concluded that the proportion of Ngati Turangitukua living in the Turangi township area in 1964 was between 10 and 15 percent of the total population of the hapu.⁴⁸

Claimant counsel contested Alexander’s figures of a total Ngati Turangitukua population of 1100 to 1500 and that 10 to 15 percent lived in Turangi in 1964.⁴⁹ In evidence for the claimants, Arthur Grace prepared a list of 42 named families, a total of 346 Ngati Turangitukua people who were living on Turangi township lands in 1964.

44. Document E1, p 1

45. Ibid, p 14

46. Document E13, para 4.5.2.2

47. Document E1, p 20

48. Ibid, p 27

49. Document E13, paras 4.5.2.6–4.5.2.7

If the 28 non-Ngati Turangitukua spouses were also included, the total would increase to 374. He also noted that some children of these families were living away from home at the time and these were not counted. Nor were Ngati Turangitukua families living in the immediate district, at Tokaanu or elsewhere outside the Turangi township scheduled boundaries, included in this total.⁵⁰

Alexander also examined the effects, in terms of land title, on Ngati Turangitukua living on Turangi township lands. Of the total 29 households, 16 were unaffected by title changes, nine houses remained on site but the size or shape (or both) of titles was changed, and four houses were removed and the lands taken. Alexander concluded that, 'while some Ngati Turangitukua households were badly disadvantaged', these 'were not representative', and suggested, 'Dislocation was felt disproportionately by some households, while the property of others was not affected at all'.⁵¹

Claimant counsel commented, 'Mr Alexander's evidence, although interesting and informative, does not illuminate the questions now before the Tribunal'.⁵² However, Mr Alexander was careful to point out that his analysis of 'effects' was strictly in terms of effects on title to sites of houses existing in 1964, and was not an overall assessment of impact. Claimant counsel was, however, quite rightly concerned that a broader view be taken of how the Crown's actions affected the Ngati Turangitukua community:

While some of the worst suffering *was* directly related to what was happening to land that people were living on, those whose properties were *not* affected ... were nevertheless intimately connected with all of those whose properties were being taken or damaged or re-shaped, and were profoundly affected by the whole experience themselves. That is what being part of a community is about. You are part of what is happening to others, and they are part of what is happening to you. [Emphasis in original.]⁵³

We consider Ngati Turangitukua perceptions of community under the headings of 'mana and rangatiratanga' and 'turangawaewae and papakainga' below (secs 4.4.2–4.4.3).

4.3.3 The evidence of Taylor and McClintock

Dr Nick Taylor submitted a report on the social and economic impact assessment of the development of the Turangi township, prepared by Wayne McClintock and himself.⁵⁴ He stated clearly that this 'report does not purport to be an assessment of the impact of the development of Turangi on Ngati Turangitukua'.⁵⁵ Nor did his report add materially to our conclusions stated in the *Turangi Township Report 1995*. Taylor stated that his report:

50. Document E6

51. Document E1, p 40

52. Document E13, para 4.5.2.13

53. Ibid, para 4.5.2.12

54. Document E2

55. Ibid, p 1

does not challenge the Tribunal's findings that the claimants were prejudiced by Crown activities but considers, whether, given these findings, it can also be said that such construction had some positive effect.⁵⁶

Dr Taylor concluded that there were tangible benefits arising from the decision to construct a permanent town at Turangi rather than a temporary construction camp. These included bringing the public amenities and services of a small town to a rural area, the contribution to the local economy by MOW in the form of wages to employees, and payments to contractors and other service providers, the emergence of Turangi as a 'gateway for tourism in the district' especially with the establishment of the regional headquarters of the Department of Conservation in Turangi, and the 'emergence of strong community leadership and identity'.⁵⁷

The claimants did not deny there were some positive benefits, but noted that in the post-MOW period employment prospects had dropped, restructuring in the 1980s reduced job opportunities further, particularly with the departure of the New Zealand Forest Service and other employers, and the associated redundancies. It is also a moot point whether the construction of the Turangi township affected the growth of tourism. It could be argued that the development of Turangi as a tourist centre would have happened anyway, but more slowly and in a more easily managed way. Claimant counsel submitted that the Ngati Turangitukua 'share of the tourist dollar might well have been rather more had it not been for the Crown's intervention', and that the existence of a large State housing area in a construction town near two prisons might have discouraged investment in tourism in Turangi.⁵⁸ Perceptions of benefit are not easily measured, and the claimants felt that, on balance, their losses were greater than their gains. For example, Arthur Grace referred specifically to the loss of community identity of Ngati Turangitukua.⁵⁹ But he was talking about mana and rangatiratanga, not the kind of community identity Dr Taylor described in the Turangi township.

4.3.4 The evidence of Brent Parker

The Crown submitted two reports compiled by historical researcher Brent Parker, although he did not appear in person. Both reports provided further analysis of the amounts paid in compensation to Ngati Turangitukua owners for lands taken under the Public Works Act. One report comprised a list, with accompanying notes, of the compensation paid to certain families for their interests in various lands in the Turangi township.⁶⁰ The second report addressed the issue of development debt on lands in the Tokaanu development scheme taken for the Turangi township and whether compensation paid was discounted to pay off this debt.⁶¹ Parker concluded:

56. Document E3, p 1

57. Ibid, p 21

58. Document E13, para 4.5.3.8

59. Document E4, paras 16–19

60. Document E10

61. Document E21

Scheme land taken by the Ministry of Works in the course of the construction of Turangi Township had a detrimental effect on the Tokaanu Development Scheme. Large areas of the more developed and most productive land were either taken, used or damaged which had a significant impact on the ability of the scheme to function and to service the development.⁶²

Under the statutory obligation to act in respect of Maori lands in multiple ownership, the Maori Trustee negotiated a settlement that paid the debt on lands taken, and payment for injurious affection on other scheme lands affected but not taken. 'The claim for injurious affection, plus interest, covered the amount the affected lands would most probably have been able to provide towards decreasing the development debt.'⁶³ Parker concluded that this compensation 'was not discounted to pay debts owing to the Tokaanu Development Scheme'.⁶⁴

These reports do not provide any further information to change the Tribunal's findings on compensation but they do serve the useful purpose to assure claimants that, within the narrow constraints of the Public Works Act, Maori owners were paid the compensation they were entitled to under that Act. The Tribunal commented that the statutory process for negotiating compensation was long and complicated, and probably not understood by many owners. The Tribunal made no finding on complaints about the Maori Trustee, and considered:

on the evidence before it, that the Maori Trustee did all and perhaps more than might reasonably have been expected of him in ensuring that the owners received the compensation to which they were legally entitled.⁶⁵

The Tribunal did find:

that the Public Works Act 1928 failed adequately to recognise the relationship of Ngati Turangitukua to their ancestral land and to provide for adequate compensation for their loss of land and that such failure is in breach of the Treaty obligation of the Crown adequately to recognise and protect the rangatiratanga of the claimants, who have thereby been prejudicially affected.⁶⁶

4.4 REVIEW: CONCEPTS OF COMMUNITY DEVELOPMENT

4.4.1 Introduction

In reviewing the evidence submitted by both Crown and claimants in relation to remedies in the Turangi township claims it became obvious to the Tribunal that there were different perceptions of what was meant by the term community. For example, when Dr Taylor spoke of 'community leadership and identity', he was referring to the

62. Ibid, p 8

63. Ibid, pp 8–9

64. Ibid, p 9

65. *Turangi Township Report 1995*, sec 19.5.5

66. Ibid, sec 19.7

community of people living in the Turangi township.⁶⁷ The Ngati Turangitukua concept of community was expressed in terms of their marae, kinship, and ancestral ties with the land at Turangi. Their concept of community embraced not only those who live in the Turangi district, but also all those kin who may be living elsewhere and want to retain their ties with Ngati Turangitukua. This is a different population from the residents of Turangi township, although some Ngati Turangitukua live in, and participate in the Turangi township community. In the following sections we consider briefly the claimants' concern about loss of mana and rangatiratanga, the concepts of turangawaewae and papakainga, and finally an assessment of the Ngati Turangitukua concept of community development, their strong sense of identity as a hapu, and their aspirations for the future.

4.4.2 Mana and rangatiratanga

Eileen Duff stated:

As a hapu we have lost our rangatiratanga. We used to be able to control and manage our own affairs on our own papakainga, but all that changed . . .

We're lumped together with the other Maori in the town. This hurts us. We have continued to identify ourselves very distinctly as Ngati Turangitukua. This is our town and our place, and the others are visitors to our place. But we don't have rangatiratanga over this place any longer.⁶⁸

Much of the claimants' concern is related to loss of mana and rangatiratanga, a feeling of being marginalised in their own territory, and a desire to ensure the younger generation understand their ancestral ties to their home place, their papakainga. As Mrs Duff stated:

In everybody's mind, now, Turangi is seen as a Ministry of Works town, as if we didn't exist before. It is as though our centuries of history in this place were deleted because of that intense period of time that brought so many strangers into our land.⁶⁹

She quoted a whakatauki that stressed the importance of understanding the past among the younger generation:

Me titiro whakamuri i mua i te haerenga whakamua.

*You must always look back before going forward.*⁷⁰

She also commented on the importance of a sense of identity, remembered through place names, stories, waiata, and carvings in the wharenui, the meeting house at Hirangi Marae. For example, the mountain behind the town is Pihanga. 'She is our whaea (mother)'. She is also depicted in a prominent position in the front of the

67. Document E2, p 21

68. Document E5, para 26

69. Ibid, para 31

70. Ibid, para 39

meeting house. Mrs Duff also referred to the ancestor Ngatoroirangi, who explored the land, climbed Tongariro, caused the geothermal heat to come there to warm him, and left many place names. ‘When Ngatoroirangi stubbed his toe on Pihanga he said Ka tuohu ahau ki te wahine (I will bow before this woman)’.⁷¹ Pihanga is the maunga tapu, sacred mountain of Ngati Turangitukua, an integral part of their papakainga. She emphasised the importance of young people being able to grow up in a supportive and culturally strong environment, knowing their identity with kin and ancestral lands.

Arthur Grace, also described the need for Ngati Turangitukua to ‘regain our proper position as tangata whenua’, the need to restore their mana:

This will involve our having more economic clout, and being able to establish ourselves as an economic force in our own rohe. It will also involve our having greater control over the natural resources in this area.⁷²

He was also concerned about the loss of rangatiratanga, and the need to restore a balance, so that the younger generation will grow up to understand both their ancestral past and the nature of the changes brought about by the influx of people into their papakainga, as well as feel a sense of identity and pride for the future.

Mr Nepia made it clear throughout his submission that he considered both the claim and any redress should incorporate all of Ngati Turangitukua:

I was quite clear from the outset that the claim needed to be run on a hapu basis. My grandmother and my uncle had given me a very strong message that it was ‘the people’ who had been affected by what happened. Their focus wasn’t on individuals or individual families.⁷³

He saw the way ahead in presenting ‘a united front to the Crown’, and raising ‘the consciousness of the hapu so that once again we are functioning as a hapu should, with a single strategy for the benefit of everybody’.⁷⁴ Many of the individual and family grievances are already being dealt with in the process agreed for resolution of ancillary claims.⁷⁵ The remedies package proposed by Mr Nepia was seen as ‘what is necessary to set us on the road to economic and cultural health’, in other words, some compensation for ‘the Crown’s disregard’ of the mana and rangatiratanga of Ngati Turangitukua.⁷⁶

4.4.3 Turangawaewae and papakainga

The terms turangawaewae and papakainga were often used by claimants in the context of their wanting to restore their mana and rangatiratanga in the Turangi area.

71. Ibid, para 34

72. Document E4, p 2

73. Document E3, para 22

74. Ibid, para 24

75. Ibid, para 77

76. Ibid, paras 82–83

We pause to consider their meanings as set out in several dictionaries of the Maori language.⁷⁷

Turangawaewae was not listed as such by Tregear. The two words from which it is derived are: tu, to stand, hence turanga, standing, and wae or waewae, leg, foot (feet). Ryan listed turangawaewae with the meanings domicile, home, home turf. Williams did not list turangawaewae as a separate entry. Under tu, meanings given were stand, and be erect, as in: 'Ka tu ona waewae he stood on his feet'. Under turanga, the meaning was given as circumstance, time etc of standing. Literally, turangawaewae means a standing (place for) the feet. By an extension of this meaning the term is widely used to denote identification with a place where one has rights, where one belongs, the home place, where there are ancestral connections. Turangawaewae Marae at Ngaruawahia was so named because its development under the leadership of Te Puea in the 1920s represented a return by Waikato Maori to ancestral lands following the Waikato raupatu (land confiscation) of the 1860s.

Papakainga contains the term kainga which is often used as a synonym for papakainga. Tregear suggested that kainga was 'probably related to kai' meaning food or eating. Williams, however, stated the derivation of kainga is from ka, the place where fire has burnt, and listed a number of meanings:

- (a) Place of abode, lodging, quarters, encampment, bivouac;
- (b) Unfortified place of residence (one or more dwellings);
- (c) Country;
- (d) Home (with definite article or possessive pronoun).

Tregear listed similar meanings. Both Ngata and Biggs produced dictionaries of English into Maori, and under home listed kainga (kaainga) and wa kainga (waa kaainga). Biggs also listed haukaainga and kaainga tupu. Ngata also listed meanings for homeland as kainga tipu or whenua matua, and for homeless as kainga kore. Ryan listed kainga kore as meaning stateless. Both Williams and Biggs listed whakakainga (-kaainga) as make a home. Ryan listed meanings for kainga as home, residence, village, settlement; kainga kanohi was translated as landscape; and kainga noho meant home address, abode, address.

Papakainga is an extension of kainga to incorporate papa with various meanings related to earth and Papatuanuku, the Earth Mother. Williams suggested that papa, in the context of papakainga, originally referred to an earth floor or site of a house, and from this was derived the 'modern expression' of papakainga, meaning a living area or village. Ryan listed meanings of papakainga as original home, home base. As in the Maori language generally, the meanings of words are usually defined by the context, rather than a precise translation by single words into English. It is reasonable to assume that when Ngati Turangitukua claimants used the term papakainga, they were referring to their ancestral home territory in a broader sense, not just the village or

77. B Biggs, *The Complete English-Maori Dictionary*, Auckland and Oxford University Presses, 1987; H M Ngata, *English-Maori Dictionary*, Wellington, Learning Media for Ministry of Education, 1993; P M Ryan, *The Reed Dictionary of Modern Maori*, Auckland, Reed, 1995; E Tregear, *The Maori-Polynesian Comparative Dictionary*, Wellington, Lyon and Blair, 1891; H W Williams, *A Dictionary of the Maori Language*, 7th ed, Wellington, Government Printer, 1971

houses where they lived. Embedded in the meanings of both turangawaewae and papakainga is a strong sense of identity which is inherited and defined by whakapapa, genealogy.

4.4.4 The Ngati Turangitukua concept of community development

Arthur Grace referred to the unsettling effect of the Tongariro power project and the development of Turangi township on the hapu:

We were a close hapu, Ngati Turangitukua. The families who lived in the immediate area were all related, and even the pakeha families that lived here permanently were part of the Ngati Turangitukua community. . . .

When the Project came, it upset everything. We had been the main people of this place, but suddenly there were people everywhere who were complete strangers to us.⁷⁸

Mr Grace told us that the hapu resisted pressure for Hirangi Marae to become a multi-cultural marae. However, the Ngati Turangitukua elders, in keeping with the Maori tradition of manaakitanga, decided that as the people of the project (of all races) had no place of their own in Turangi, they should be invited to use the Hirangi Marae. Ngati Turangitukua kaumatua decided it would not work for them to give up their papakainga for the establishment of a pan-tribal marae in Turangi. However, many Maori living in Turangi who are not Ngati Turangitukua have continued to participate in activities at Hirangi Marae. But there are also Maori families living in Turangi who do not participate much, if at all, because their ancestral ties are in other districts.

Arthur Grace also stressed the need to put in place methods of ensuring that the young people have the opportunity to learn about their hapu, their kawa, their waiata and their stories so that Ngati Turangitukua will be strong into the next century and beyond. It is this kind of thing which the claimants see happening at Turangitukua House when they have the resources to get it up and running as a dedicated centre for the education of their people. At present they own nothing as a hapu except their Hirangi Marae.

Eileen Duff expressed similar concerns in her evidence. She said that when she was a young girl growing up in Turangi, there were two things that Ngati Turangitukua people had which made them who they were. The first was their common ancestry which no one could take away from them. The second was the Ngati Turangitukua land which they owned together. Those things, she said, 'made us one hapu, one family'.⁷⁹ Mrs Duff reminded the Tribunal that prior to the coming of the project the whole of Turangi was theirs. The land was very advantageously sited near Lake Taupo. There was always tourism in the area which provided the people with options for development. Their people could come and build houses on their ancestral land and live a largely self-supporting life if necessary, just by growing food and hunting and fishing.

78. Document E4, paras 12, 16

79. Document E5, para 1

Mrs Duff also emphasised the central importance of the marae as a real focus in the lives of the people. She conceded that, with the passage of time, life at the marae was probably going to change with the major changes wrought by the second half of the century. Nevertheless, she was quite sure that the coming of the project brought about changes for her people at a much accelerated rate and of a very radical nature. Whereas, if the settlement and expansion of Turangi had developed naturally over time, a lot of changes to their Maori way of life might not have occurred at all, or would have occurred at a rate that the people were able to cope with.

The experience of my Ngati Tuwharetoa cousins around the lake, who have retained their turangawaewae, lends support to this view. They have not had to deal with the challenges from outside that we have had to deal with, and their identity as tangata whenua has never been under threat.⁸⁰

Mrs Duff spoke of the benefits and detriments arising out of the loss of their land in exchange for other benefits. She acknowledged that individual landowners had been paid money in compensation and had the facilities of a new town. But the benefits perceived by the planners and engineers were not necessarily perceived as such by Ngati Turangitukua. For example, the people were assured by Crown representatives that they would be given work on the project. The trend of rural Maori people having to leave the country to get work in the city had already begun by 1964. If the younger people of the hapu could obtain work in the Ngati Turangitukua rohe they would be able to stay in their tribal district. This was a very attractive prospect for the elders whose interest always is to keep their whanaunga close to home. It was one of the main reasons why the elders agreed to some of their land being taken for the project. Mrs Duff stated that things didn't work out in the way the Crown had led the people to believe, because the Ministry of Works brought with them experienced personnel from another project. The Ngati Turangitukua people who were engaged were almost all employed on unskilled work. There were very few opportunities to learn and advance to more responsible positions. The net result, Mrs Duff said, was that the project did not deliver long-term employment benefits to her people.⁸¹

Mrs Duff has been teaching at Turangi for 26 years, and she does not consider the educational situation is any better now than it would have been had the project not come. They had local schools, including an area school for secondary school-aged children and also access to a system for government scholarships to enable children to be educated at religious Maori boarding schools. The scholarships were withdrawn when Tongariro High School was established. Some families still send their children to these schools but now it is at their own expense. Mrs Duff also told us that a health benefit derived from the project was a maternity hospital in Turangi, but that has now been closed. Expectant mothers must go to Taupo or Taumarunui or have their babies at home. Before the project came, Turangi had a doctor, a district nurse, and a

80. Document E5, para 7

81. Ibid, para 13

chemist. ‘Nothing has changed in that regard.’⁸² The only institutional health care now provided in Turangi is the care of the aged in the building that was formerly the maternity hospital.

Mrs Duff next emphasised that the main advantages of living in Turangi are the same as they have always been: they are the natural advantages, which are provided by the Tongariro River (which used to have beautiful rapids before the Ministry of Works excavated aggregate from the river bed near Turangi), Lake Taupo, the hot springs, and the mountains. To the extent that their beautiful waterways have changed, Mrs Duff said, they have changed to their detriment ‘because of the hydro development’.⁸³ She noted earlier evidence given about the apparently irrevocable changes to their beloved Hirangi Stream and changes to the Hangarito and Kahurau Streams. We note that matters relating to these streams are being dealt with under ancillary claims.

Mrs Duff also noted that Turangi was not without shopping facilities prior to the coming of the project. They had several general stores and in the immediate vicinity there were always shops servicing the fishing and sporting tourists who came to Turangi. She considered the shopping centre established in Turangi has not really thrived, and many Turangi people do their main shopping in Taupo, now a substantial town.⁸⁴

There were sporting facilities too at Turangi before the new town was established. Most recreation was centred around the marae, which was the organisational focus for a variety of activities ranging from sports events, haka and waiata groups, social functions, and touring theatrical events. Mrs Duff commented:

So Turangi was by no means a cultural or recreational desert. The place functioned very well as an integral community, and there was always plenty going on for those who wanted to participate. So when I review all these factors I am unable to say that we were benefited by the Project in any of those ways that our old people thought we would be benefited.⁸⁵

Mrs Duff was particularly concerned about ensuring that the status and respect for Ngati Turangitukua as tangata whenua be acknowledged:

There has been no civic tradition established in Turangi of proper recognition of Ngati Turangitukua as tangata whenua. Right from the days of the Ministry of Works, our identity as the people of this place has been overlooked on many, many occasions

...

We’re lumped together with other Maori in the town. This hurts us. We have continued to identify ourselves very distinctly as Ngati Turangitukua . . .

We accept that there are many citizens of Turangi who are permanently established here who are not Ngati Turangitukua but who nevertheless call this place home and

82. Ibid, para 20

83. Ibid, para 21

84. Ibid, para 22

85. Ibid, para 25

have a right to stay. But we of Ngati Turangitukua need to have the means to establish ourselves more forcibly as the prime people of this place. I believe that it is possible to do this in a way that upholds our mana, and does not diminish others. I would like to see Ngati Turangitukua as an economic and social power in Turangi . . .⁸⁶

The Tribunal does not need to be concerned specifically with the concept of a Turangi community, the people and organisations of the modern town. We do, however, express our concern that the tangata whenua, Ngati Turangitukua, feel so marginalised in their ancestral lands. In putting together their ‘remedies package’ Ngati Turangitukua have emphasised both the cultural and economic dimensions of community development as a hapu. Their community focus as a hapu is their marae, their ancestral lands, papakainga and turangawaewae, and recognition of their mana and rangatiratanga as tangata whenua in Turangi.

4.4.5 The Ngati Turangitukua Charitable Trust

Mr Nepia explained that the Hirangi Marae Committee (also known more formally as the Ngati Turangitukua Maori Committee) has been ‘the controlling body of Ngati Turangitukua’. During 1997, following discussion and on legal advice, the hapu decided to establish a ‘Ngati Turangitukua Charitable Trust to carry forward the work of the Marae Committee in a more formal and legal context’.⁸⁷ The trust has now been registered as a charitable trust.

In a series of meetings of the hapu during August and September 1997, decisions were made to establish a list of beneficiaries of the trust through whakapapa. In a sworn affidavit, dated 18 November 1997, Mr Nepia explained that the beneficiaries entitled to be called Ngati Turangitukua could all trace their descent from Turangitukua, the man. Spouses and whangai would not be included if they were not descended from Turangitukua.⁸⁸ The whakapapa of 29 tupuna were all identified in a ‘master whakapapa’ as descendants of Turangitukua.⁸⁹ From these family whakapapa a list of 4974 living descendants has been compiled which comprises the current list of beneficiaries.⁹⁰ Mr Nepia noted that some whakapapa are incomplete, and there is still some work to be done to ensure this register of beneficiaries is complete and accurate.

The Tribunal has reviewed this register and The Ngati Turangitukua Charitable Trust deed, and commends Ngati Turangitukua for their considerable effort in compiling their whakapapa and register of beneficiaries. The hapu has put in place a legal identity and management structure to administer assets for the benefit of some 5000 or more people who identify as Ngati Turangitukua.

86. Document E5, para 30

87. Document E3, para 33

88. Document E22

89. Ibid, app 7

90. Ibid, app 8

CHAPTER 5

TRIBUNAL RECOMMENDATIONS FOR REMEDIES

5.1 APPROACH TO REMEDIES

5.1.1 Introduction

In its approach to determining the appropriate remedies in this claim, the Tribunal must have regard to a number of factors. These have in large part been the subject of considerable discussion in chapter 2. Here we briefly recall the salient features while bearing in mind the other matters there canvassed.

At the outset we note that a decision as to whether memorialised land should be returned to the claimants cannot be made in terms of section 8A(2) standing on its own. Any such recommendation is to be included in the recommendations which the Tribunal thinks fit to make under section 6(3) and (4) of the 1975 Act.

5.1.2 Relevant factors

Factors relevant to the Tribunal's determination of remedies are:

- The claimants are entitled to rely on all the Tribunal's findings as to facts and as to Treaty breaches and the Tribunal is required to have regard to all the Treaty breaches it has held to be well-founded and to the reasons for such findings.
- The power of the Tribunal to make binding recommendations is remedial in nature. It was conferred to protect the position of Maori claimants and to provide safeguards to ensure such protection.
- The Tribunal should have regard to those Treaty principles which it has found the Crown to have breached.
- In assessing the relevance of such breaches the Tribunal should have regard to the relative seriousness of the various breaches and to their prejudicial effect on the claimants.
- The redress to claimants should bear some proportion to the nature of the breaches and the prejudice identified.
- A restorative approach to remedies is appropriate. This should include facilitating the restoration, to an extent reasonably possible, of the rangatiratanga and hence the mana of Ngati Turangitukua. While the Crown cannot restore rangatiratanga in the abstract, resources can be restored to the hapu that enable it to exercise rangatiratanga. The return of land is an essential component of the

restoration of rangatiratanga. A policy of restoration should attempt to assure the hapu's continued presence on the land, the recovery of its status in the district and the recognition of its tribal authority. Thus, where the place of a hapu has been wrongly diminished, an appropriate response is to ask what is necessary to re-establish it.¹

- The Tribunal does not consider that, as a matter of law, there must be a 'direct' relationship between the historical wrong and memorialised land, before resumption can be ordered, or that there must be some specific feature of the history of the asset which means that it should be returned to Maori. However, the Tribunal considers that there is such a 'direct' relationship between the historical wrongs recorded in our findings and all the land, whether memorialised or non-memorialised land, taken by the Crown in breach of Treaty principles. All such land was ancestral land, part of the papakainga of Ngati Turangitukua and of special importance and significance to the hapu.
- The Tribunal may have regard to the condition of the land and any improvements to it up to a time immediately before its transfer by the Crown to a State enterprise, but not to any change in such condition and improvements or in its ownership or possession since that time.
- Before deciding what properties the Tribunal considers should be returned, whether memorialised or Crown-owned land, or a mixture of both, it should review all such properties. In so doing it should have regard to the claimants' proposals for a comprehensive relief package.
- When deciding which memorialised or Crown-owned properties it proposes to recommend be returned to Ngati Turangitukua, it should have regard to the aggregate value of all such properties.
- The Tribunal should have general regard to the relativity between the present claimants and the Tainui, Ngai Tahu and Ngati Whakaue settlements. However, for reasons noted in chapter 2, we have been able to obtain only limited assistance in making a meaningful assessment of the relativity between the three settlements and the present claim.
- In considering what recommendations it should make in this case, the Tribunal must have regard to all relevant circumstances. These will include the nature, extent, and effect of the Treaty breaches by the Crown, and the additional evidence and submissions received during the remedies hearing.
- In considering whether to make a binding recommendation for the return of memorialised land, the Tribunal will take into account the greater consequences that a binding recommendation of memorialised land would have for the Crown than would a non-binding recommendation for the return of Crown-owned land.

1. The Tribunal considers the various factors formulated by the Muriwhenua land Tribunal noted in our earlier chapter 2, at section 2.6.3, to be relevant, although not all will have equal weight.

5.2 THE ASSESSMENT OF TREATY BREACHES BY THE CROWN AND PREJUDICE TO THE CLAIMANTS

5.2.1 Introduction

The claimants have relied on all the various Treaty breaches by the Crown held by the Tribunal to be well-founded and the evidence in support of such breaches. Here, we briefly discuss the more important of the claimants' grievances the Tribunal has upheld.

5.2.2 The choice of site

The Crown elected to take the claimants' land at Turangi West when a suitable site owned by the Crown and available for the purpose, existed nearby. No compelling reason was given by the Crown for not utilising its own land.

The Crown's choice of the claimants' site in preference to their own cannot be justified on the ground that the Tongariro power development was perceived to be in the national interest and that there was some support from Ngati Tuwharetoa for the project. It was not necessary to take Ngati Turangitukua land to develop the Tongariro Power project. That could have been done with either a permanent or temporary township at the Turangi East site across the river on Crown land. The decision to take the claimants' land appears to have been based on grounds of convenience with no apparent thought for the claimants' Treaty rights.

The Tribunal considers that failure of the Crown to give adequate consideration to the Treaty rights of the claimants in electing to take their land rather than utilise its own, to be the fundamental cause or genesis of all the subsequent wrongs suffered by the claimants. It gave rise to very serious consequences and was in itself a most serious failure to respect the Treaty rights of Ngati Turangitukua.

5.2.3 The Public Works Act 1928 and the Turangi Township Act 1964

Crown counsel, in noting that the Tribunal found these Acts to be both draconian and in breach of Treaty principles, observed that neither were in the same category as the New Zealand Settlements Act 1863. The Tribunal accepts the 1863 confiscatory legislation enforced in the context of the unjust wars waged by the Crown on Maori is of a different order from the Public Works Act and associated legislation applicable in this case. However, it would be wrong to infer from those circumstances, that the Crown's Treaty breaches in the present case were not serious and did not give rise to grievous injury to the claimants.

Counsel cited a passage from an unreported judgment of the High Court in which the judge stated that the power of the Crown compulsorily to acquire land 'is a draconian – but necessary power – in a complex, collective society'.² We were not informed whether this case involved the compulsory taking of Maori land. Justice

2. *Deane v Attorney-General* unreported, 16 December 1996, Hammond J, HC Hamilton CP65/94, p 15 (cited in doc E14, p 24)

Hammond was presumably dealing with a case where he considered the circumstances justified the use of the draconian compulsory powers. As we have, however, already stressed, it was not necessary for the Crown in this case, to have taken the claimants' land at all for a township under the legislation in question. Given the nature of such powers, they should not have been invoked when suitable Crown land was available.

Crown counsel correctly noted that the Tribunal was satisfied that the claimants received the compensation to which they were legally entitled under the legislation then in force. He did not, however, refer to the Tribunal's finding that the Public Works Act 1928 failed adequately to recognise the relationship of Ngati Turangitukua to their ancestral land, and to provide for adequate compensation for their loss of land, thereby failing to recognise and protect the rangatiratanga of the claimants. In short, the legal compensation provided for and paid did not adequately compensate the hapu members for their loss. The legislation is also seriously defective in the 'offer-back' provisions of the Public Works Act 1981 which made it impossible in important instances for Ngati Turangitukua to take advantage of them.

5.2.4 Failure to protect wahi tapu

One of the most serious of the Crown's omission to fulfil its Treaty obligations was its failure to ensure that the wahi tapu of Ngati Turangitukua were respected. Crown officials gave repeated assurances to the people that this would be done. As we have seen, irreplaceable wahi tapu were destroyed or desecrated. This has been the source of continuing grief to the hapu. It need not have happened had the MOW ensured that proper procedures were adopted and implemented to ensure their protection.

5.2.5 Failure of Crown to consult fully with Ngati Turangitukua

The Crown consulted with the people on only two occasions before approving the final plan and deciding to take a substantial area of the claimants' ancestral land for the township. At the first meeting on 24 May 1964 the Maori owners who attended were expected to comprehend a large and complex hydroelectric power scheme, as well as the prospect of a new and permanent town on their lands, and to reach agreement on the proposed development (on the basis of an out-of-date plan) at one meeting in one day.

Four months elapsed before a second and final meeting was held on 20 September 1964. It occurred only because of the insistence of a leading kaumatua of Ngati Turangitukua, Arthur Grace senior, who interceded with the Minister of Works. It took place on a Sunday, the day before Cabinet approved the Turangi township proposal. By that time, all the plans which were the basis for the Cabinet approval the next day, were fixed and final. The meeting served the purpose of informing the people what had been decided; it was not consultative in nature. They were presented with a fait accompli.

The failure of the Crown to consult with and keep the people adequately informed of what was being proposed was a serious breach of their Treaty obligation to consult fully with the hapu. That failure was exacerbated by the failure of the Crown to ensure that the people were fully informed and consulted during the construction and development of the township. Far from being involved and knowledgeable about developments, they were too often ignored or advised only at the last minute of Ministry action likely to have serious consequences for them.

5.2.6 Crown failure to honour assurances and undertakings

The failure of the Crown to honour many of its assurances and undertakings given to Ngati Turangitukua, on which they relied on giving their approval in principle to the Turangi township being developed on their ancestral lands, lies at the heart of their grievances. These are discussed in section 3.5. The result of the Crown's failure was to undermine and negate the owners' earlier approval. As a result, the owners did not give their informed consent or agreement to the non-fulfilment of the Crown's undertakings or to the taking of their land by the Crown. In all the circumstances, the Tribunal's finding that in failing to honour various of its undertakings the Crown failed to act reasonably and in good faith towards Ngati Turangitukua and, further, failed actively to protect their rights under article 2 of the Treaty was a serious one. The conduct of the Crown was the cause of many of the hapu's grievances.

We have already noted the failure of the Crown to honour its assurances that it would protect wahi tapu of Ngati Turangitukua. Another serious failure relates to the land taken.

The Crown undertook that it would compulsorily acquire no more than 1000 acres freehold and 200 acres leasehold. The latter (the Industrial Area) to be returned to the owners in 10 to 12 years.

In fact, without consultation with or the agreement of, the claimants, the Crown took the freehold of 1665 acres and resiled on its undertaking to return the leasehold land.

In this way the Crown acquired virtually all the highly valued papakainga land of Ngati Turangitukua. Had the people known that the Crown would fail, by so wide a margin, to honour their undertaking as to the amount of freehold and leasehold land that would be compulsorily acquired, it is highly unlikely they would have agreed in principle at the May 1964 meeting, to the Crown's township proposal.

In mitigation of this very serious Treaty breach of good faith on the part of the Crown, Crown counsel submitted that while the Crown took 'core ancestral land' not all of such land was taken. However, the land not taken was largely hilly and more remote, whereas the land taken was the heartland of the Ngati Turangitukua papakainga.

Crown counsel also submitted that the hapu members cannot be considered landless because various of them still have ownership interests in other land in the Turangi area. As already noted, that land is not core ancestral land. Moreover, much of it is held in multiple ownership with members of other hapu of Ngati Tuwharetoa.

Crown counsel observed that the land taken (apart from the 30 acres of the marae land) had been partitioned and was no longer held as Maori customary land. But the fact that, as a consequence of the various Native Lands Acts, the land in question had been partitioned by the Native Land Court, does not negate the nature of such land as ancestral papakainga land, of immense cultural and social importance to the hapu collectively. That is why this claim is a hapu claim.

Later in his submissions, Crown counsel noted the Tribunal's conclusions that the economic base of the hapu was seriously eroded by the construction of the town. He submitted that the land taken was incapable of financially supporting the hapu in 1964, and that only 10 to 15 percent of the hapu lived on hapu land (individually owned by whanau) at this time. He also noted that in 1962 the Ngati Turangitukua owners were advised that the debt owed under the Tokaanu development scheme substantially outweighed the value of land and improvements. The only 'hapu' land base in 1964 was the Marae block (reduced to 20 acres, the balance being acquired for the township).

The Tribunal understands that many Maori land development schemes administered by the Department of Maori Affairs carried an uneconomic debt load and that from time to time such debt was written off to a viable level. We were told that the basic soundness of the farming operations was improving. As Crown counsel conceded, it could not be said that, had the land not been taken, it would be uneconomic today.

After a careful consideration of all the relevant evidence the Tribunal found that in deciding to construct a permanent township at Turangi, the Crown failed to do so in such a way as would best preserve an economic base for Ngati Turangitukua and maintain their lifestyle and community.

Crown counsel cited a passage from the Tribunal's 1995 report in which we recorded that many hapu members in their evidence to us, lamented the loss of a traditional subsistence lifestyle and their forced adjustment to living in a town. Some families lost not only their homes but also their livelihoods, their gardens and orchards, and their livestock which had supported their large extended families. The Tribunal observed that from an economic point of view, many of these households may not have been commercially productive, but when viewed against the social structure where kinship, whanaungatanga, and reciprocal obligations, were often expressed in barter arrangements rather than cash, the economic arguments seemed less relevant. But we would emphasise that the land did provide, for these whanau, an economic base which was an integral and highly important element in maintaining the Ngati Turangitukua community. It ensured there would always be a base for hapu members returning to their papakainga. There was still land available for whanau members to build a home for permanent residence. The loss of this land has removed this possibility.

5.2.7 Demographics

The evidence of Arthur Grace was that some 370 people of Ngati Turangitukua descent lived in the Turangi area in 1964. Crown counsel suggested that the number of people affected is small in a relative sense. But he rightly conceded that this does not mean that members of the hapu not resident in Turangi at the time were not affected. The whakapapa investigations carried out by the hapu subsequent to our hearing show that incomplete research has identified some 5000 Maori as Ngati Turangitukua. When the investigations are completed it appears likely that the number will be significantly higher. Allowing for the fact that not all will maintain a close association with the hapu, it is apparent that Ngati Turangitukua are a substantial hapu.

5.2.8 Trauma and adverse social repercussions

The Tribunal found that as a result of inadequate consultation with the Ngati Turangitukua people, the Crown failed to mitigate the trauma and adverse social repercussions from their activities in Turangi. As the Tribunal noted, this has resulted in the dislocation of households, the loss of lifestyle and livelihood, and the loss of the guarantee of a place on ancestral lands for their children. The pain of this loss is long term and is being passed on to the next generation.

Evidence called by the Crown, it was suggested, properly assessed the impact of the development by showing that while it imported a sharp change of lifestyle for many, it imported benefits, amenities and facilities which have placed Turangi in a position to attract and take advantage of new initiatives such as tourism. This evidence fails adequately to recognise both the short and long-term effect on the Ngati Turangitukua people who were displaced by the township. It also overlooks that most if not all the suggested benefits would have been available to the hapu had the township been developed on the nearby Turangi East Crown owned site. At the same time it would have avoided in large part the many serious consequences that have resulted from the displacement of their papakainga by the township.

5.2.9 Crown failure to safeguard waterways and fishing

Ngati Turangitukua people have for more than 30 years, suffered from the detriment to their waterways and fishing resulting from the MOW activities on their land.

5.3 PREJUDICE SUFFERED BY NGATI TURANGITUKUA

In assessing the seriousness of the effect of the Crown's Treaty breaches, it is at once apparent that they are on a quite different scale from those which so disastrously and over so lengthy a span, affected the Tainui and Ngai Tahu people. But, given that the scale was quite different and the number of people adversely affected much smaller, the Tribunal considers that Ngati Turangitukua people have, nevertheless, been

seriously affected by the Crown's Treaty breaches. This was apparent when we listened to the people in 1994 and again last year.

Moreover, they will continue to be seriously affected if appropriate action is not taken to restore them to a position where they can again exercise their rangatiratanga in and over their papakainga.

Counsel for the claimants set out the prejudice which the claimants say arises from the breaches of the Treaty by the Crown which affected them:

- Loss of land and the sudden invasion of thousands of strangers led to a disintegration of the Ngati Turangitukua community.
- Ngati Turangitukua experienced loss of mana, and the whole hapu experienced the grief of seeing the undermining of the mana of their kaumatua.
- They lost faith in their Treaty partner.
- The disregard of the Crown's representatives for Ngati Turangitukua sensibilities as tangata whenua and as a Treaty partner led to disillusionment and fatalism.
- Their loss of land, and the conduct of those implementing the Project, caused shock and trauma both to individuals and to the hapu as a whole.
- The degradation of land and waterways caused feelings of upset and powerlessness to effect change.
- Through the Crown's choice of the Turangi West rather than the Turangi East site, Ngati Turangitukua were denied the opportunity to benefit from proximity to a town without suffering the detriment of being swallowed up by it.
- The Crown's refusal to lease Ngati Turangitukua land rather than acquiring the freehold denied Ngati Turangitukua the opportunity to get back the reversion of their land after the lease had expired.
- The loss of their ancestral land had multiple effects on the hapu:
 - diminution of their tangata whenua status;
 - the loss of a community focus for the hapu;
 - loss of identity for the hapu and its constituent members;
 - loss of autonomy and an ability to control their destiny;
 - loss of cohesiveness as a group;
 - Ngati Turangitukua people could no longer live a subsistence/traditional lifestyle on family land;
 - loss of mahinga kai;
 - diminution of their spiritual connection to ancestors through their land and wahi tapu;
 - they lost their only means of establishing an economic base as a hapu, because land was their only asset;
 - they lost their ability to exercise kaitiakitanga;
 - loss and destruction of wahi tapu and associated cultural knowledge and power;
 - their ability to develop land remaining in Maori ownership has been diminished, because of the degradation of the aesthetic appeal of the Turangi environs;

—Ngati Turangitukua are no longer able to accommodate returning family on papakainga land: future generations have lost their turangawaewae.³
The Tribunal believes this to be an accurate summation of the prejudice arising from the Crown’s Treaty breaches which affected Ngati Turangitukua.

5.4 QUANTUM

5.4.1 Introduction

The Tribunal is charged under section 6(3) of the 1975 Act with recommending to the Crown what action it should take to compensate for or remove the prejudice to the claimants arising from well-founded Treaty breaches by the Crown. In this case, such recommendations may include a binding recommendation in terms of section 8A(2) of the Act that certain land be returned to Maori identified by the Tribunal.

The Tribunal accepts that when making any such recommendations it is not its function in this case to review why negotiations thus far have been unsuccessful. In particular, it agrees with Crown counsel, that it should not have regard to the contents of any ‘without prejudice’ documents relating to that negotiation.

It is clear that the return of some land to Ngati Turangitukua is an essential aspect of a redress package. This is conceded by the Crown which does not oppose the making of some binding recommendations in terms of section 8A(2). In short, the Tribunal’s task is to quantify how much land, whether memorialised or Crown-owned, should be returned, and what additional redress (if any), of a monetary or other nature, should be provided by the Crown.

In seeking to provide reasonable redress to the claimants, the Tribunal’s objective is to compensate for past wrongs and remove the prejudice by restoring the claimants to the position where they are freely able to exercise their rangatiratanga in the future. Thus, in seeking to put together an appropriate package of remedies, the Tribunal has been guided by a restorative approach rather than strictly monetary equivalents or equity in acreage. We have also born in mind the claimants’ view that the remedies sought are for the benefit of the whole hapu and succeeding generations, not for any particular individuals.

5.4.2 Categories of properties

The Tribunal has been greatly assisted in its task of identifying appropriate properties by the various schedules submitted by the claimants and the Crown. We also acknowledge the great assistance received from counsel for the claimants and for the Crown in our review of the complex factors bearing upon the compilation of an appropriate package of remedies.

Schedules of properties produced to the Tribunal included details of the properties which the claimants sought to have returned, and of other Crown and non-Crown

3. Document E13, para 4.3

properties available in the Ngati Turangitukua rohe not sought by the claimants. Some details drawn from one of the schedules follow.⁴

Category of Property	Number	Value
Total memorialised properties sought	74	\$6,334,850
Total non-memorialised properties sought	34	\$3,315,040
Total of both categories	108	\$9,649,890
Total Crown properties not sought	47	\$9,613,800
Non-Crown non-memorialised properties available	11	\$630,800
Total of both categories	58	\$10,244,600

More detailed schedules showed the various categories of the 47 Crown properties not sought by Ngati Turangitukua. These comprised one commercial, two commercial – police, four schools, three reserves, 21 residential – education, six residential – police, 10 other residential and one property in the section 40 offer-back process.⁵

The claimants did not give reasons for not seeking the return of any of these properties. We consider it likely, however, that they preferred the properties they had chosen over police stations or schools. They have sought the return of over 60 memorialised residential properties and no doubt saw no need to seek any Crown-owned houses occupied by teachers or police.

5.4.3 Properties sought by Ngati Turangitukua

These have been detailed in the claimants' third amended statement of claim which is discussed in some detail in chapter 4. They fall into various categories. It is convenient to consider them in the order adopted by the claimants in the schedules to their statement of claim.

We do so in the light of our approach to remedies in this claim and our assessment of Treaty breaches by the Crown and the resulting prejudice to the claimants as earlier noted in this chapter. We stress that, in evaluating the nature and extent of the Crown's Treaty breaches, we have had regard to all relevant parts of our 1995 report. Chapter 3 of this report is a summary only of the more important features of the Crown's Treaty breaches. We also rely on our consideration of the claimants' remedies statement of claim in chapter 4, viewed in the light of the evidence relied on by the claimants and the Crown. While we here note some specific matters from these various sources, they are indicative only. In deciding what land should be returned and what other recommendations we should make, we have endeavoured to take into account all relevant factors. We turn now to the remedies sought by the claimants.

4. Document E16(b)

5. Document E16(d), pp 14–20

(1) *Schedule 1: wahi tapu memorialised land*

Ngati Turangitukua seek the return, in fee simple and without cost to the claimants, of the site imbued with the sacred memory of Te Puke a Ria on which stands Turangitukua House. Te Puke a Ria has been lost forever, but the hapu wishes to maintain the cultural significance of the site by developing Turangitukua House as a cultural identity and learning centre for the hapu. Further particulars are recorded in sections 3.3.3 and 4.2.2. Monetary compensation to facilitate this is also sought.

The Tribunal recognises the extreme importance of this land to the hapu. It proposes therefore, to recommend that this memorialised land, located at the junction of State Highway 1 and State Highway 41 and bounded on the third side of a triangle by Atirau Road, and known as 130 Atirau Road, be returned to Ngati Turangitukua. We also intend to recommend that the Crown makes financial provision for upgrading, refurbishment, and other setting-up costs.

(2) *Schedule 2(a): memorialised land in the Industrial Area*

This and the land in schedule 2(b) is of great importance to the claimants as being part of the approximately 189 acres which the Crown undertook to lease and return to Ngati Turangitukua after 10 to 12 years. It was never returned. The land was the site of a number of wahi tapu which were destroyed.

The circumstances giving rise to this claim, including the Crown's Treaty breaches, are to be found in the Tribunal's 1995 report.⁶ They are briefly summarised in our earlier section 3.5.2. The evidence in support of the claim for the return of the land is considered in our preceding section 4.2.8.

(3) *Schedule 2(b): Crown-owned land in the Industrial Area*

This land is in the same general area as the memorialised land in schedule 2(a). The same comments apply.

The Tribunal is satisfied that the return of both the memorialised and Crown land in the Industrial Area is essential in assisting the restoration of the rangatiratanga of Ngati Turangitukua over this ancestral land and their exercise of kaitiakitanga over it as tangata whenua.

We propose to recommend that both the memorialised land in schedule 2(a) and the Crown-owned land in schedule 2(b) be returned to Ngati Turangitukua.

The five properties in schedule 2(a) are known respectively as 24, 16, and 57 Tukehu Road, and 135 and 65 Atirau Road, Turangi. A sixth property, 165 Atirau Road, included in this schedule is in fact Crown owned.⁷ It is accordingly now included in schedule 2(b).

The nine properties in schedule 2(b) are known respectively as 165, 175, 112, 29, and 150 Atirau Road,⁸ 11 Dekker Drive, and three lots on 145 Atirau Road and Dekker Drive, Turangi.

6. Waitangi Tribunal, *Turangi Township Report 1995*, Wellington, Brooker's Ltd, 1995, sec 4.3.2, ch 6

7. Document E15, para 48

8. The 150 Atirau Road property, at present known as the Kokiri Centre, is currently held by the Crown with options open as to the manner in which the claimants wish to take ownership: see our discussion of the claim in respect of kaumatua housing at section 4.2.5.

In addition to the return of the foregoing land in schedules 2(a) and 2(b), the claimants seek compensation for the taking of the land in the Industrial Area which is no longer memorialised or in Crown ownership. The compensation sought is a monetary sum which will enable Ngati Turangitukua to purchase more such land in future. We consider this proposal later in 5.4.4.

(4) Schedule 3(a): memorialised residential properties

The return of some 59 memorialised residential properties in Turangi township, is sought so that Ngati Turangitukua people can be restored to ownership of residential land in Turangi. The current value of these properties is of the order of \$3,141,850.

Prior to the taking of their land it was possible for various whanau of Ngati Turangitukua to allocate sections of land on which whanau members living in Turangi or returning home could build a home in close proximity to their relatives. When the land was taken this was no longer possible. The Tribunal is convinced that an essential part of a just settlement is that some additional housing should be made available to Ngati Turangitukua. This will enable them to provide accommodation and, in appropriate cases, facilitate the purchase of houses for hapu members in need of housing in Turangi.

However, we are not convinced that it would be appropriate for the Tribunal to make a binding recommendation for so large a number as the 59 memorialised properties sought by the claimants. No evidence was given as to why the return of all these properties was necessary to meet the actual needs of the people nor did we receive any indication of which properties would be preferable to others.

In all the circumstances, the Tribunal is not satisfied that it should make a binding recommendation for any of the memorialised residential properties.

The Tribunal is reinforced in this opinion by the fact that there are available in Crown ownership or in the possession of other Crown agencies, a variety of residential properties in Turangi which are, or could be, available for settlement purposes. A schedule of properties in the rohe of Ngati Turangitukua produced by the Crown includes details of non-memorialised properties held by:

- The Electricity Corporation of New Zealand.⁹
- The Department of Conservation.¹⁰
- Land Information New Zealand.¹¹
- Crown properties landbanked for use in settlements.¹²
- Housing NZ.¹³

We propose to recommend that the Crown should make available to Ngati Turangitukua, free of cost, residential properties in Turangi to the aggregate value of approximately \$700,000. This sum should provide a nucleus of properties in Ngati Turangitukua ownership which could be used to assist their whanau to settle in

9. Document E16(c), p 4

10. Ibid, p 9

11. Ibid, p 14

12. Ibid, p 15

13. Ibid, p 17 (properties available for use in settlement). On pages 18 to 20, many Housing NZ properties are listed that may be considered for sale for use in settlement, subject to current tenancies.

Turangi. In some cases, at least, people who would earlier have been able to be accommodated on papakainga land, before it was taken by the Crown, will be able to live in these houses. It would be essential that Ngati Turangitukua is fully consulted before a decision is made as to which properties would be made available as part of this settlement.

The list of landbanked properties supplied by the Crown contains seven properties.¹⁴ Two of these are included in the claimants' schedule 4(b) of properties of note which they seek to have returned. We propose to recommend that this be done. Of the remaining five, three are described as residential properties, one is used for health purposes and the other as a public health nurses' clinic. We propose that these should be included along with the residential properties and the claimants be given the opportunity to select these in lieu of residential properties.

(5) Schedule 3(b): kaumatua housing

The claimants seek the return of five residential properties which are used to accommodate kaumatua of Ngati Turangitukua. The hapu sees the ability to provide appropriately for their kaumatua on papakainga land as a fundamental aspect of their rangatiratanga. These dwellings are on land formerly part of the marae which was very reluctantly conceded to the Crown. The Tribunal considers the return of these properties is an essential part of the settlement with the Crown. It proposes to recommend that this be done.

Three of the five kaumatua properties are in Takinga Place and two in Mawake Place.

Crown counsel made a supplementary submission on, among other matters, the Kaumatua Flats and the Kokiri Centre, which is a schedule 2(b) memorialised property at 150 Atirau Road which we have recommended be returned to Ngati Turangitukua. The Crown is prepared to make each of these properties available to the claimants at a discounted price. The Office of Treaty Settlements has been advised that Ngati Turangitukua want the Kaumatua Flats and the Kokiri Centre to be returned as part of the claim settlement.

Crown counsel advise that:

At this stage the Crown, with Cabinet approval, is holding the properties with the options open as to the manner in which the claimants wish to take ownership, whether under the discount purchase scheme or through the Treaty settlement process. However, it should be noted that if the properties are to be transferred as part of the settlement, the Office of Treaty Settlements will, under current Crown policy, have to purchase the properties at full current market value in order to transfer them as part of the claim settlement.¹⁵

Given the present expressed preference of the claimants for these properties to be returned as part of the claimant settlement we have dealt with them on that basis. However, during the three-month period immediately following the issue of this

14. Ibid, p 15

15. Document E17, para 9

report the claimants may prefer to discuss the possibility of taking advantage of the discount provisions in respect of one or both such properties. Our recommendations for their return as part of the settlement should not prevent this outcome should the claimants seek it.

(6) Schedule 4(a): memorialised properties of note

These and certain Crown-owned properties of note are sought by the hapu so that, as tangata whenua, Ngati Turangitukua can participate in the commercial life of Turangi. Particulars of the various properties are noted in section 4.2.7.

The Tribunal considers it extremely important that the return of a reasonable number of properties having actual or potential commercial value should be part of the total remedies settlement package. We believe the return of the properties sought is necessary to assist the hapu re-establish its position of influence and standing in the wider community of which it is now part, and by which it is numerically submerged. In short, it is an essential measure to facilitate the revival of Ngati Turangitukua's rangatiratanga in their papakainga, and of their mana as the tangata whenua of Turangi and their identity as the descendants of Turangitukua, the man. In addition, we consider that the return of both the memorialised and Crown-owned properties of note sought by the claimants will constitute a base, which, if wisely administered, should be capable, over time, of providing a useful source of income for the hapu.

(7) Schedule 4(b): Crown-owned properties of note

Two of the three Crown-owned properties are landbanked for use in settlement. Our reasons for supporting the return of the memorialised properties in schedule 4(a) apply equally to the Crown-owned properties of note.

Four of the properties in schedule 4(a) are in Iwiheke Place being the site of a former hostel; one is in Tautahanga Road having formerly been a telephone exchange; one is at 33 Turangi Town Centre having been vested in the Crown for a Post Office; one is a former Forestry hostel property at Ohuanga Road and adjacent to this property is a vacant section. The last property, known as the Pony Club land, is situated on State Highway 1 and Taupahi Road. It remains to be developed.

The three properties in schedule 4(b) are at 33 Turanga Place, which is the Department of Conservation headquarters; 187–189 Tautahanga Road was a former hospital and is at present an ambulant care centre; 5 Wharekaihua Grove is currently a recreational space. The two latter properties have been landbanked by the Crown.

The Tribunal proposes to recommend that both the memorialised properties in schedule 4(a) and the Crown-owned properties in schedule 4(b) be returned to Ngati Turangitukua.

5.4.4 Monetary payment sought by Ngati Turangitukua

An important component of a just settlement of the claim is the provision by the Crown of an adequate sum of money to the claimants. We do not recommend that this be paid by way of compensation as such. It is however necessary, along with the

return of land, to assist Ngati Turangitukua in the restoration of their rangatiratanga over their papakainga. The provision of money will not in itself achieve this objective but it should enable the hapu to go some distance towards achieving it. Ngati Turangitukua seek payment under a number of heads which we now consider.

(1) Establishment of Turangitukua House

The destruction of Te Puke a Ria was a grievous loss to the hapu. We have recommended the return of the site on which Turangitukua House stands. The hapu now wishes to maintain the significance of the site by developing Turangitukua House as a cultural identity and learning centre for the hapu.¹⁶ The house will require upgrading and refurbishing and incur other setting-up costs. The Tribunal believes this objective is of central importance in assisting Ngati Turangitukua to promote the cohesion and revitalisation of the hapu and its members. It will be of material assistance in healing the pain and profound sense of alienation which resulted from the Crown's Treaty breaches. The Tribunal proposes to recommend that the Crown should, after consultation with the claimants, meet the reasonable costs of carrying out the necessary work including setting-up costs.

(2) Preservation and maintenance of wahi tapu

The claimants state that:

In relation to the desecration of wahi tapu, Ngati Turangitukua seek payment not for the desecration of wahi tapu, such desecration not being compensatable, but payment relating to the rehabilitation and ongoing maintenance of wahi tapu sites which are still in existence.¹⁷

The claimants' evidence is considered in section 4.2.3. The purposes for which Ngati Turangitukua seek payment are to:

- (a) establish and maintain a wahi tapu register;
- (b) conduct a mapping project pertaining to Ngati Turangitukua wahi tapu;
- (c) seek archaeological or other advice as required on the best ways to preserve endangered sites;
- (d) undertake native planting and other improvements at wahi tapu sites;
- (e) maintain and preserve wahi tapu to the highest standards;
- (f) purchase land around wahi tapu sites to protect, preserve and restore the sites so far as possible.¹⁸

The Tribunal strongly supports the payment of an appropriate sum for these purposes and will recommend accordingly.

16. Claim 1.1(ac), paras 3.1, 3.2

17. Ibid, paras 4.1–4.3

18. Ibid

(3) Monetary payment to enable the purchase of land in the Industrial Area no longer in Crown ownership

The claimants in their third amended statement of claim seek compensation by way of a monetary payment for the taking of the land in the Industrial Area of such land as is no longer in Crown or SOE ownership.¹⁹ The land in question was all compulsorily acquired by the Crown in breach of its undertaking that it would be leased for 10 to 12 years and returned to the owners. The claimants have sought the return of such part of this industrial land as was transferred by the Crown to State enterprises and which was memorialised accordingly. We propose to recommend the return of such land together with such land in the area as is still in Crown ownership. We construe the claimants' request, therefore, as relating to land in the Industrial Area which the Crown disposed of otherwise than to a State enterprise. They seek compensation of a sum which will enable them, over time, to purchase such land. In our 1995 report, we calculated the total area occupied for the Industrial Area as being approximately 189 acres or 76.5 hectares.²⁰ The total area of the properties we are recommending be returned is some 42.2 hectares. There is therefore a balance area of some 34.3 hectares in the Industrial Area. We have no information as to the condition or usage of this land. Nor have we any information as to the present or likely future cost over time of acquiring this land.

Mr Nepia explained to us the reasons the hapu wish to be able to purchase back the remainder of the block as and when it becomes available. He first made the point that if the Crown had not breached its undertaking to lease, not take, the land, hapu members would still own it. More than that, parts of the land are of particular significance as containing tapu areas. Ngati Turangitukua attach very considerable importance to regaining ownership so that they can once again resume their proper role as kaitiaki of the land. The hapu, if once again in control of the land, wish to ensure that the best possible use is made of it. But Mr Nepia stressed that any development of the land 'cannot be done at the expense of the tapu areas'.²¹

While we are very sympathetic to the Ngati Turangitukua's wish to re-acquire this land, we lack sufficient information to make the recommendation sought by them. We propose to recommend that this be left to the Crown and the hapu to negotiate.

(4) Monetary payment for Ngati Turangitukua to establish a 'start fund'

Mr Nepia saw the need for a 'start fund' to enable the hapu to fulfil a long-term goal of developing an economic base. Building up a property portfolio would be part of the hapu investment strategy. Establishing businesses which return a profit for the hapu he saw as a key feature of their long-term plans. He emphasised that funds would be needed for consultants' advice on strategic planning. A buffer to cover expenses and outgoings would be needed until the hapu starts to earn an income. For these and associated reasons a 'start fund' is sought.

19. Ibid, para 6.1

20. *Turangi Township Report 1995*, sec 13.7

21. Document E3, pp 20–21

Although not expressly stated, we have inferred that the hapu is seeking from the Crown a monetary sum which will enable it to purchase properties over and above those memorialised and Crown-owned properties which we propose to recommend should be returned to them. If this is the case, we have been given no information as to the number or nature of such properties, or their likely cost.

If, as we believe it should, the Crown accepts our recommendation for the return of certain Crown-owned properties to Ngati Turangitukua, it is apparent to us that, along with the properties which will be returned as a result of our binding recommendations in respect of memorialised properties, the hapu will need to have some working capital which could be characterised as a 'start fund'. It is unrealistic to expect the hapu, which at present lacks any asset other than the Hirangi Marae, to meet outgoings, including necessary maintenance, without adequate cash resources, no matter how prudent their management may be of the properties they will acquire on settlement. We see the provision by the Crown of an adequate 'start fund' for these purposes, as an essential part of a total settlement package and propose to recommend accordingly.

We are, however, unable to make any meaningful assessment of the proposal, if such it be, for the payment by the Crown of additional funds for the acquisition of additional properties or the financing of new business ventures. We can only propose that the hapu should negotiate this matter directly with the Crown.

5.4.5 Recreation reserve properties

Ngati Turangitukua seek the return, in fee simple, of the ownership of all recreation reserves owned by the Crown in the claim area.²² They believe this will constitute recognition that Ngati Turangitukua are tangata whenua of Turangi and kaitiaki of the natural and spiritual environment there. Ngati Turangitukua recognise that any such reversion may be subject to any special conditions required to guarantee the maintenance of conservation values as mutually agreed upon between the Department of Conservation and the hapu. The lands are detailed in schedule 5 to the third amended statement of claim.

The first of these at 27 Te Rewha Street is part of Crescent Reserve and is referred to later. Next on the list is a group of 10 separate lots gazetted as reserves in 1984 and 1985.²³ In a schedule submitted by the Crown, these lands, and the remainder on the list gazetted at other dates, were described as Crown land administered by the Department of Conservation.²⁴ In closing submissions, Crown counsel advised:

A number of the reserves listed by the claimants have been vested in the Taupo District Council pursuant to s 26 of the Reserves Act [1977] . . .

As vested reserves, these lands are 'private land' for the purposes of s 6(4A) of the Treaty of Waitangi Act 1975 (as inserted by s 3 Treaty of Waitangi Amendment Act 1993).

22. Claim 1.1(ac), para 10; see the list of properties in schedule 5

23. *New Zealand Gazette*, 1984, p 649; 1985, p 393

24. Document D17(d)

The Crown submits that the Tribunal is therefore unable to make any orders in respect of these reserves and that they are not available for Treaty settlement purposes.²⁵

In a notice published in the *New Zealand Gazette* over the name of B P Bonisch, regional solicitor, Department of Survey and Land Information, and dated 6 March 1996, the following lands were declared ‘acquired for recreation reserve and local purpose (utility) reserve respectively and vested in the Taupo District Council’.²⁶

Recreation reserves		
Lot 4	DP50583	660m ²
Lot 34	DP50583	991m ²
Lot 11	DP50584	3049m ²
Lot 42	DP50584	1170m ²
Lot 67	DP50585	2.8657ha
Lot 52	DP50585	71m ²
Local purpose (utility) reserves		
Lot 29	DP50583	209m ²
Lot 71	DP50583	4884m ²
Lot 72	DP50583	1579m ²
Lot 4	DP50584	1089m ²

This declaration was made ‘Pursuant to section 20(1) of the Public Works Act 1981, and to a delegation from the Minister of Lands’. This section empowers the Minister to acquire land and issue such declaration:

upon being satisfied—

- (a) That the owner of the land has agreed to his land being acquired; and
- (b) That no private injury will be done by the acquisition, or that compensation is provided by this Act for any private injury that will be done by the acquisition—

In section 20(2), such a declaration is:

deemed to be a Proclamation under section 26 of this Act, and the provisions of this or any other Act relating to Proclamations shall apply to any such declaration as if it were a Proclamation issued under that section, except that it shall not be necessary to publicly notify the declaration.

The notice in the *New Zealand Gazette* was headed ‘Land Acquired for Recreation Reserve and Local Purpose (Utility) Reserve in Taupo District’, and dated at Wanganui on 6 March 1996. Apart from the legal description of each lot set out above,

25. Document E15, paras 13–14

26. *New Zealand Gazette*, 1996, pp 822–823

within the Wellington land district, there was nothing in this notice to indicate that these reserves were in the Turangi township.

The Tribunal views this matter with some concern. The statement of claim dated 22 December 1993 and published in the Tribunal's *Turangi Township Report 1995* issued on 11 September 1995, at p390 stated, inter alia, that the claimants sought the 'return to claimants of the remaining Crown land [in the Turangi township] without payment'. The Tribunal suggested that the parties enter into direct negotiations over the return of appropriate Crown and SOE lands and other matters sought as remedies. On the face of it, this transfer of 10 small reserves, that were Crown land, to the Taupo District Council, thereby making them 'private land' (by the Crown's definition) and outside the jurisdiction of the Tribunal, or claimant negotiations, gives the appearance of having been designed to remove these lands from contention. If this is indeed the case, it is difficult to reconcile this action with good faith on the part of the Crown.

A further two reserves were vested in Taupo District Council under the Reserves Act 1977 by the regional conservator on behalf of the Minister of Conservation 'in trust for recreation purposes'.²⁷ These are:

Section 39, Town of Turangi	SO17929	1083m ²
Section 1, block 1, Turangi Suburban	SO18979	2492m ²

These lands are on Taupahi Road and likewise have been removed from claimant negotiations. It is not clear in the notice whether the nature of the 'trust' means these are still Crown lands but administered by Taupo District Council.

The Crescent Reserve was identified as one of the ancillary claims. Crown counsel advised the Tribunal:

The Regional and Head Offices of the Department of Conservation have been involved in negotiating the return of this reserve. The main issue relates to the relinquishment by the Taupo District Council of management responsibility over part of these reserves (3.4 hectares of grassed area adjacent to Tautahanga Road).²⁸

A small part of Crescent Reserve, a separate section of 620 square metres, at 27 Te Rewha Street (lot 41, DP29872) is listed in schedule 5 to the third amended statement of claim. Presumably this area will also be included in negotiations between claimants, Department of Conservation and Taupo District Council as part of this ancillary claim.

Apart from the reserves vested in Taupo District Council in 1996, and thereby removed from our jurisdiction by becoming 'private land', the Tribunal has no jurisdiction to make a recommendation binding on the Crown to return to Ngati Turangitukua the remaining Crown lands listed as recreation reserves on schedule 5 and administered by the Department of Conservation. Negotiations are already proceeding over the Crescent Reserve. The Tribunal can only recommend, therefore,

27. Ibid, p 2465

28. Document E15, para 41

that the Department of Conservation negotiate with claimants over appropriate lands that are gazetted as reserves, with a view to their return to Ngati Turangitukua ownership and/or joint management arrangements that recognise the mana and rangatiratanga of Ngati Turangitukua.

5.4.6 Environmental warranties

In chapter 4 in our discussion of the industrial properties which the claimants sought to have returned, we noted that in paragraph 5.3 of their statement of claim the claimants stated that environmental degradation has occurred on this land. Ngati Turangitukua seek warranties from the Crown as to liability for environmental hazards which may subsequently emerge and undertakings as to liability for remedying current apparent hazards. We have set out in section 4.2.8 the description which Mr Nepia gave of the present condition of part of the Industrial Area as left by the Crown. The Crown did not call any evidence refuting Mr Nepia's description of the state of parts of the industrial land, in particular the condition in which the MOW left the site of its former workshop (a large block marked no 26 on the Crown's map²⁹).

In a supplementary submission by Crown counsel, the Crown referred to the warranties sought by the claimants in paragraph 5.3 of their statement of claim.³⁰ Counsel correctly noted that, in its 1995 report, the Tribunal did not advert specifically to degradation in the Industrial Area. The Tribunal did comment on pollution of the Hangarito Stream which drains it.³¹ The Tribunal made no finding that the actions of the Crown caused environmental degradation in that area. No specific evidence on that matter was put before the Tribunal at the initial hearings, and the issues concerning Hangarito Stream are being dealt with among the ancillary claims.

However, the Crown noted that Mr Nepia, for the claimants, had given evidence that the industrial block was in part degraded. They also recognised that the claimants imply, but without particulars, that there are other contaminated sites. The Tribunal agrees with Crown counsel that precise identification of all such sites and details of the alleged hazards is therefore required.

The Tribunal received helpful information from the Crown on its policy on contamination 'when contamination is identified on land in private ownership that was previously owned by the Crown'. The Crown stated that where the Crown:

proposes to sell, transfer or otherwise return a property where contamination is believed or known to be present, the Crown will attempt to manage the issue of contamination as part of the process of land disposal. In negotiating a transfer or other form of land disposition, the Crown will work with the purchaser or transferee to manage any issues of contamination and its effect. The action taken will be appropriate to the nature and extent of contamination and the present and the reasonable future use of the site.³²

29. Document D17(e)

30. Document E15

31. Ibid, para A2; see also *Turangi Township Report 1995*, sec 4.8.3

32. Document E15, para 5.8

Clearly this policy will apply to all relevant land transferred to Ngati Turangitukua as a result of this Tribunal's recommendations. This being so, we accept the Crown's statement that such matters can and will be dealt with in the negotiation process. In the circumstances, we make no recommendation on the matter.

5.4.7 Management regime for conservation lands

In her closing submissions claimant counsel sought a recommendation from the Tribunal on the management arrangements relating to conservation land in their rohe. She stated:

As kaitiaki of Turangi, Ngati Turangitukua believe they have a special role to play in the management of conservation land in their rohe. They have seen a great deal of environmental degradation in their tribal area, and they want to play a part in improving matters. To this end, they seek to have the Department of Conservation pay particular regard to the hapu management plan which the Ngati Turangitukua Environment Committee hopes soon to embark upon.³³

Crown counsel submitted that there is provision in section 17F of the Conservation Act for the Department of Conservation to consult with 'such other persons or organisations as the Director-General considers practical and appropriate'.³⁴ Counsel also noted that section 4 of the Act requires all those with responsibilities under the Act 'to give effect to the principles of the Treaty of Waitangi'. Further, Ngati Turangitukua interests are already 'accommodated within the provisions for the preparation and approval of the conservation management strategy for the area'.³⁵ There is no provision, however, 'to give effect to iwi or hapu management plans' without, in Crown counsel's opinion, 'a substantial amendment to the Conservation Act'.³⁶ Nevertheless, Crown counsel did acknowledge that the existing legislative framework allowed 'significant opportunities for Ngati Turangitukua to act in partnership with the Department [of Conservation] in the management of conservation lands'.³⁷ The Tribunal would hope that with goodwill on both sides it should be possible for ways to be found whereby Ngati Turangitukua may participate meaningfully at all levels of decision-making in the management of conservation lands within their rohe.

5.4.8 Ancillary claims

Counsel both for the claimants and for the Crown advised that considerable progress has been made in resolving the 83 ancillary claims. The Tribunal in its 1995 report noted that David Alexander had been appointed as investigator to identify particulars of each, refer them to appropriate agencies for response and facilitate resolution.³⁸ In

33. Document E13, para 4.6.9

34. Document E15, para 23

35. Ibid, para 25

36. Ibid, para 24

37. Ibid, para 27

38. *Turangi Township Report 1995*, sec 21.7

April 1995 he reported that 25 of these had been wholly or partly settled or were in negotiation. By June 1996 only 26 of these claims remained unresolved. Crown counsel advised that Cabinet at that time approved a system for resolving these 'in a process that was to be separate from the Treaty settlement process'.³⁹ Most of these claims are being facilitated by Land Information New Zealand, and three by the Office of Treaty Settlements in claims involving Transit New Zealand land, and lands administered by the Department of Conservation.

Counsel for the claimants seek a recommendation that Land Information prepare a works programme detailing the outstanding ancillary claims and the time-frame within which the various projects will be completed.

Because negotiations appear to be proceeding satisfactorily, and given that some technical and engineering work is required, Crown counsel submitted that a firm time frame for completion cannot be given. The Tribunal accepts that a great deal has been achieved in resolution of the ancillary claims, and at this stage there seems a reasonable expectation that the outstanding claims will also be resolved in due course. The Crown is to be commended for the efforts made by the several agencies who have facilitated resolution of these claims. Crown counsel stated in summary: 'The ancillary claims are all being treated separately, outside the settlement quantum. There is a commitment on the part of the Crown to resolve these claims'.⁴⁰ The Tribunal, therefore, sees no need at this stage to make any specific recommendation on the ancillary claims.

5.4.9 The claimants' mandate for settlement with the Crown

Mr Nepia, who brought the claim on behalf of Ngati Turangitukua, told us in evidence that at a hui of the hapu held at Hirangi Marae on 11 May 1996 the hapu agreed that all assets received in any settlement with the Crown should be held by a charitable trust on behalf of the entire hapu. The Ngati Turangitukua Charitable Trust has been duly constituted and was incorporated under the Charitable Trusts Act 1957. The Tribunal holds a copy of the declaration of trust made on 9 November 1997 and of the sealed certificate of incorporation dated 3 February 1998 duly signed by the registrar of incorporated societies.⁴¹

In making a binding recommendation for the return of memorialised land, the Tribunal is required by section 8A(2)(a)(ii) to identify the Maori or group of Maori to whom the land is to be returned. The beneficiaries under the trust are the members of Ngati Turangitukua. We are satisfied that the trust is representative of and accountable to its beneficiaries. The hapu, as noted in section 4.4.5, has now established a list of 4974 living descendants which comprises the current list of beneficiaries of the trust. Additional beneficiaries will be added as they are identified.

We were advised by Crown counsel that the Crown has perused the charitable trust deed and accepts that the Tribunal can properly vest assets in the trust.

39. Document E15, para 30

40. Ibid, para 43

41. Document E23

The Tribunal proposes to recommend that all lands and money received on settlement be vested in The Ngati Turangitukua Charitable Trust.

5.4.10 Removal of memorials

In closing submissions, Crown counsel stated:

The Tribunal should order the removal of memorials from those properties which are not the subject of resumption orders. There are no other Treaty claims to the land in the Turangi township area. There is no proper basis for memorials to be maintained once this claim is settled.

The legislative scheme anticipates memorials should be resumed in the context of considering a total relief package.⁴²

Claimant counsel submitted that Ngati Turangitukua lands and the Turangi township are within the rohe of Tuwharetoa, which is the subject of the Tuwharetoa comprehensive claim and which is yet to be heard:

Although the Turangi Township claim has resolved all issues relating to Turangi it may be that the Tuwharetoa Comprehensive Claim will seek the return of memorialised land in Turangi by way of general compensation for Treaty breaches by the Crown. It is therefore appropriate for the memorials to remain on the titles pending the resolution of the Tuwharetoa Comprehensive Claim.⁴³

The Ngati Tuwharetoa comprehensive claim was lodged by the late Sir Hepi Te Heuheu and the Tuwharetoa Maori Trust Board on behalf of the hapu of Ngati Tuwharetoa, including Ngati Turangitukua. It was registered on 31 May 1996 as claim Wai 575. The claim alleges grievances in relation to lands, forests, geothermal and other resources, environmental and conservation matters, and the failure of the Crown to recognise the rangatiratanga of all the hapu of Ngati Tuwharetoa.

Included in the relief sought are recommendations that:

The sale of all surplus Crown and SOE lands within the rohe of Tuwharetoa cease immediately;

The Crown establish a 'land bank' for all such properties in the expectation that they will constitute a part of any future compensation.⁴⁴

We understand that the Waitangi Tribunal has not heard this application and we are unsure whether Ngati Tuwharetoa wish to prosecute it at all or, more specifically, in relation to any memorialised land sought by Ngati Turangitukua which the Tribunal has not recommended should be returned.

Had this question not arisen, the Tribunal would have been disposed to have acceded to Crown counsel's application. In the circumstances, however, we consider the appropriate course is for us to defer a decision until it is known whether or not

42. Document E14, para 7

43. Document E24, para 5.2

44. Ngati Tuwharetoa comprehensive claim, Wai 575, p 27

Ngati Tuwharetoa claim an interest in the memorialised land which we have not recommended should be returned. The registrar is accordingly directed to confer with counsel for Ngati Tuwharetoa and for the Crown to ascertain whether the parties wish to be heard on the question.

5.4.11 Embargo on whakapapa

In section 4.4.5, we related how, in a sworn affidavit dated 18 November 1997, Mr Nepia produced as exhibit 7 to his affidavit, a copy of the Ngati Turangitukua whakapapa. The whakapapa comprise the descendants of Turangitukua the man. The whakapapa of 29 tupuna were all identified in a 'Master Whakapapa' as descendants of Turangitukua. It was from these family whakapapa that a list of 4974 living descendants has been compiled. This list comprises the current list of beneficiaries who are listed in exhibit 8 of Mr Nepia's affidavit.

In his affidavit, Mr Nepia, on behalf of Ngati Turangitukua, asked that the whakapapa material is treated in a way that respects the mana of the whakapapa. He requested that no one should be permitted to inspect the whakapapa without their prior approval. He also asked that the Tribunal return exhibit 7 once our report on remedies is completed.⁴⁵

The Tribunal considers that one copy of exhibit 7 to Mr Nepia's affidavit should remain on the register of the Ngati Turangitukua claim known as Wai 84. The registrar is directed to note on the register that no part of the whakapapa identified as exhibit 7 to the affidavit of Mr Nepia dated 18 November 1997 and recorded in the Tribunal's record of documents as E22 may be inspected without the prior approval of The Ngati Turangitukua Charitable Trust.

The registrar is further directed to return to the claimants, the copies of exhibit 7 in the possession of the members of the Tribunal and all other copies (if any) in the possession of the Tribunal, other than the one copy to be retained on the Tribunal's register of documents. The Tribunal also directs that the Crown copy be returned to the registrar for forwarding to the claimants.

5.5 TRIBUNAL RECOMMENDATIONS

5.5.1 Introduction

The Tribunal has foreshadowed the recommendations which it proposes to make and its reasons for so doing. In reaching its decision on such recommendations the Tribunal has attempted to act fairly and reasonably towards both Ngati Turangitukua and the Crown. We are conscious that the prolonged proceedings before the Tribunal, and the abortive negotiations with the Crown, have placed very considerable strains on the claimants. They have had few material resources to sustain their efforts. We are

45. Document E22, paras 20–21

also conscious that this is a test case and the outcome is a matter of concern for the Crown.

In the result, we have decided to recommend the return of some, but not all, the memorialised properties sought by the claimants. In all, the claimants sought the return of memorialised properties valued at \$6,334,850. We are recommending the return of memorialised properties valued at \$3,193,000. The difference of \$3,141,850 is the value of memorialised residential properties which we have not recommended should be returned.

In addition, we are recommending that the Crown should return Crown-owned property valued at \$2,199,995. In lieu of the return to Ngati Turangitukua of any memorialised residential property, we propose that the Crown should return non-memorialised properties to the value of \$700,000.

In total, therefore, the Tribunal is recommending the return to the hapu, of Crown-owned properties to the value of \$2,899,995. The aggregate value of the memorialised and Crown-owned non-memorialised land which we are recommending be returned, is \$6,092,995.

5.5.2 Monetary payment recommendation

Ngati Turangitukua also sought monetary payments from the Crown for a variety of purposes. These were:

- (a) funding to meet the reasonable cost of upgrading, refurbishing, and setting up Turangitukua House on its return to Ngati Turangitukua;
- (b) provision of funds to assist in the rehabilitation and ongoing maintenance of wahi tapu sites still in existence;
- (c) payment of a sum of money to enable the hapu to purchase that part of the Industrial Area which is no longer owned by the Crown, and is not memorialised land, and which is in private ownership; and
- (d) monetary payment for a 'start fund'.

We strongly support the first and second proposals which will require a substantial monetary contribution from the Crown.

While the Tribunal is sympathetic to Ngati Turangitukua's wish to re-acquire the land referred to in (c) above, we lack sufficient information to make a firm recommendation. We will therefore recommend that this should be resolved by negotiations between the Crown and the hapu.

The Tribunal considers the provision by the Crown of an adequate 'start fund' as an essential part of a total settlement package.

The Tribunal is unable to make an accurate assessment of the likely total sum which will be required to meet these various purposes. However, we consider that a total payment of at least \$1 million is indicated.

5.5.3 Land to be returned

The Tribunal makes the following recommendations, in so far as they relate to land memorialised pursuant to section 27A of the State-Owned Enterprises Act 1986 as being subject to section 27B of that Act, pursuant to the powers vested in it by sections 8A(2)(A) and 6(3) of the Treaty of Waitangi Act 1975. All other recommendations are made pursuant to section 6(3) of the 1975 Act. All the land, the subject of recommendations, is situated in the town of Turangi and the certificates of title are in the Wellington Registry.

(1) Wahi tapu memorialised land

The Tribunal recommends that the memorialised land and property situate at 130 Atirau Road, and known as Turangitukua House, be returned without cost, to The Ngati Turangitukua Charitable Trust. The land is section 1 on Survey Office plan 35736 and is all the land in CT34C/191.

(2) Memorialised land in the Industrial Area

The Tribunal recommends that the following memorialised properties be returned, without cost, to The Ngati Turangitukua Charitable Trust:

- 24 Tukehu Street, being lot 9 DP28407 and all the land in CT39B/619.
- 135 Atirau Road, being lot 12 DP61544 and all the land in CT34B/571.
- 16 Tukehu Street, being lot 10 DP28407 and all the land in CT36A/ 464.
- 57 Tukehu Street, being lot 31 DP28407 and all the land in CT39D/774.
- 65 Atirau Road, being section 69 Town of Turangi and all the land in CT39D/775.

(3) Crown-owned land in the Industrial Area

The Tribunal recommends that the following Crown-owned properties be returned, without cost, to The Ngati Turangitukua Charitable Trust:

- 165 Atirau Road, being part lot 3 DP61544 and part of the land in CT34B/564.
- 11 Dekker Drive being part lot 3 DP61544 and part of the land in CT34B/564.
- 175 Atirau Road being lot 11 DP61544 and all the land in CT42D/699.
- 145 Atirau Road and Dekker Drive being lot 1 DP61544 and all the land in CT34B/563; lot 4 DP61544 and all the land in CT34B/565; and lot 7 DP61544 and all the land in CT34B/568.
- 112 Atirau Road being section 1 SO35426 and all the land in CT42C/437.
- 150 Atirau Road being section 81 Town of Turangi and all the land in CT44A/734.
- 29 Atirau Road being part Ohuanga North no 5A, block III, Pihanga survey district.

(4) Crown-owned kaumatua housing

The Tribunal recommends that the following Crown-owned properties be returned, without cost, to The Ngati Turangitukua Charitable Trust:

- 35 Mawake Place being lot 5 DP32367 and all the land in CT28A/501.
- 37 Mawake Place being lot 4 DP32367 and all the land in CT25A/456.
- 33 Takinga Street being lot 1 DP32367 and all the land in CT24D/388.

- 33A Takinga Street being lot 2 DP32367 and all the land in CT28A/500.
- Takinga Street being lot 3 DP32367 and all the land in CT24D/390.

(5) Memorialised properties of note

The Tribunal recommends that the following memorialised properties be returned, without cost, to The Ngati Turangitukua Charitable Trust:

- A group of properties situate in Iwiheke Place being respectively:
 - Lots 87, 88, and 89 DP29124 and all the land in CT38A/43.
 - Lots 96, 97, and 98 DP29124 and all the land in CT38A/44.
 - Lots 82, 83, 84, 85, 86, and 104 DP29126 and all the land in CT38A/45.
 - Lots 99, 100, 101, 102, and 103 DP29127 and all the land in CT37B/422.
- Tautahanga Road being lot 90 DP28176 and all the land in CT36C/225.
- 33 Turangi Town Centre being lot 26 DP27579 and all the land in CT33D/241.
- Ohuanga Road being lot 1 DP32621 and all the land in CT39D/500.
- 25 Ohuanga Road being lot 2 DP32621 and all the land in CT38D/915.
- State Highway 1 being section 70 Town of Turangi and sections 1 and 2 Survey Office plan 28505 and sections 1 and 2 Survey Office plan 28506.

(6) Crown-owned properties of note

The Tribunal recommends that the following Crown-owned land be returned, without cost, to The Ngati Turangitukua Charitable Trust:

- 33 Turanga Place being section 74 Town of Turangi, GN773733.
- 187–189 Tautahanga Road being lot 51 DP29638 and all the land in CT38B/684.
- 5 Wharekaihua Grove being lot 58 DP34051 and all the land in CT43B/431.

(7) Crown-owned residential properties

The Tribunal recommends that the Crown should make available without cost, to The Ngati Turangitukua Charitable Trust, residential properties to the aggregate value of approximately \$700,000.

5.5.4 Monetary payment by the Crown

The claimants sought monetary payments by the Crown under four heads.

(1) Establishment of Turangitukua House

The Tribunal recommends that the Crown should, after consultation with The Ngati Turangitukua Charitable Trust, meet the reasonable costs of upgrading, refurbishing and setting up Turangitukua House as a cultural identity and learning centre for the hapu.

(2) Preservation and maintenance of wahi tapu

The Tribunal recommends that the Crown should pay to The Ngati Turangitukua Charitable Trust, an appropriate sum to facilitate the rehabilitation and ongoing maintenance of wahi tapu sites still in existence.

(3) The purchase of land in the Industrial Area no longer in Crown ownership

The claimants seek payment of a monetary sum by the Crown which will enable the hapu, over time, to purchase the land in the Industrial Area no longer in Crown ownership. The Tribunal lacks sufficient information to make the recommendation sought.

The Tribunal recommends that the Crown should enter into negotiations with The Ngati Turangitukua Charitable Trust with a view to reaching an agreement on this claim.

(4) Establishment of a 'start fund'

The Tribunal recommends that the Crown should pay to The Ngati Turangitukua Charitable Trust an appropriate sum of money in the nature of working capital to enable the trust to meet outgoings, including necessary maintenance, while a sufficient cash flow is generated.

5.5.5 Recreation reserve properties

The Tribunal recommends that the Department of Conservation negotiates with The Ngati Turangitukua Charitable Trust over appropriate lands that are gazetted as reserves with a view either to their return by the Crown to trust ownership and/or joint management arrangements that recognise the mana and rangatiratanga of Ngati Turangitukua.

5.5.6 The costs of Ngati Turangitukua in pursuing their claim

The claimants have necessarily incurred substantial costs, legal and otherwise, in respect of their claim relating to the taking of their ancestral land by the Crown for the Turangi township. These will include the preparation of their claim; the preparation of the necessary evidence in support; the attendance at various hearings before the Tribunal at Hirangi Marae and in respect of associated interlocutory matters; negotiations with the Crown following the issue of the Tribunal's 1995 report on the Crown's Treaty breaches; an application for a remedies hearing before the Tribunal; a preliminary hearing before the Tribunal at Hirangi Marae on the Crown's submission on the standard of proof required in a remedies hearing; and the preparation of further evidence relating to and attendance at the substantive remedies hearing of the Tribunal at Hirangi Marae.

The Tribunal recommends that, to the extent it has not already done so, the Crown should meet the reasonable costs and disbursements incurred by Ngati Turangitukua in respect of the foregoing and any other relevant costs in respect of their Turangi township claim Wai 84.

Dated at this day of 1998

G S Orr, presiding officer

I H Kawharu, member

E M Stokes, member

APPENDIX I

STATEMENT OF CLAIM

IN THE WAITANGI TRIBUNAL

CLAIM WAI 84

IN THE MATTER of the Treaty of Waitangi Act 1975

AND A claim by Mahlon Kaira Nepia on behalf of Ngati Turangitukua of Ngati Tuwharetoa tribe, referred to as the Turangi Township Claim

THIRD AMENDED STATEMENT OF CLAIM IN RESPECT OF REMEDIES

Friday the 27th day of June 1997

1.1 This Statement of Claim is to be read with:

(a) the further amended statement of claim dated 22 December 1993;

(b) the second amended statement of claim dated 1 March 1994;

and in place of the second amended statement of claim in respect of remedies dated 19 December 1996.

1.2 This amended statement of claim pleads the remedies that are sought by Ngati Turangitukua by way of redress for the Crown's breaches of the Treaty of Waitangi as found in the *Turangi Township Report 1995*.

1.3 In its Report, the Waitangi Tribunal found that the Crown had breached the Treaty of Waitangi in a number of respects and considered that it would be appropriate for Ngati Turangitukua and the Crown to enter into direct negotiations (para. 21.8 of the Report).

1.4 Ngati Turangitukua and the Crown failed to reach a satisfactory settlement and accordingly the Tribunal has accepted that a hearing as to remedies must now be held (Tribunal's Memorandum dated 2 August 1995).

1.5 The Tribunal is now called upon to decide what, if any, recommendations it should make by way of remedy for the Crown's breaches of the Treaty.

WHEREFORE Ngati Turangitukua seek the following recommendations:**2. The return of Turangitukua House**

2.1 Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of the site imbued with the sacred memory of Te Puke a Ria (Turangitukua House). (Detailed in full in Schedule 1).

3. Establishment of Turangitukua House

3.1 Te Puke a Ria has been lost forever, but the *hapu* wishes to maintain the cultural significance of the site by developing Turangitukua House as a cultural identity and learning centre for the *hapu*.

3.2 Ngati Turangitukua seek monetary compensation in this regard.

4. Preservation and maintenance of Wahi Tapu

4.1 In relation to the desecration of *wahi tapu*, Ngati Turangitukua seek payment not for the desecration of *wahi tapu*, such desecration not being compensatable, but payment relating to the rehabilitation and ongoing maintenance of *wahi tapu* sites which are still in existence.

4.2 Such payment is to enable Ngati Turangitukua to:

- (a) establish and maintain a *wahi tapu* register;
- (b) conduct a mapping project pertaining to Ngati Turangitukua *wahi tapu*;
- (c) seek archaeological or other advice as required on the best ways to preserve endangered sites;
- (d) undertake native planting and other improvements at *wahi tapu* sites;
- (e) maintain and preserve *wahi tapu* to the highest standards;
- (f) purchase land around *wahi tapu* sites to protect, preserve and restore the sites so far as possible.

4.3 Ngati Turangitukua seek monetary assistance to enable them to undertake this work.

5. The return of Crown or SOE-owned land in Industrial Block B

5.1 Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of properties in Industrial Block B owned or formerly owned by a State-Owned Enterprise and which have memorials on their titles pursuant to section 27B of the State-Owned Enterprises Act 1986 (detailed in full in Schedule 2(a)).

5.2 Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of Crown-owned land in Industrial Block B (detailed in full in Schedule 2(b)).

5.3 Because of the environmental degradation that has occurred on this land, Ngati Turangitukua seek warranties from the Crown as to liability for environmental hazards which may subsequently emerge, and undertakings as to liability for remedying currently apparent hazards.

6. Compensation to enable the purchase of land in Industrial Block B no longer in Crown or SOE ownership

6.1 To compensate for the taking of the land in Industrial Block B, Ngati Turangitukua seek compensation of a sum enabling the purchase by Ngati Turangitukua over time of such land in the Industrial B Block as is no longer in Crown or SOE ownership.

6.2 Monetary compensation is sought in this regard.

7. The return of Residential Property so that Ngati Turangitukua people can be restored to ownership of residential land in Turangi

7.1 Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of residential properties owned or formerly owned by a State-Owned Enterprise and which have memorials on their titles pursuant to section 27B of the State-Owned Enterprises Act 1986 (detailed in full in Schedule 3(a)).

7.2 Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of the *kaumatua* housing (detailed in full in Schedule 3(b)).

8. Return to the *hapu* properties of note so that, as *tangata whenua*, Ngati Turangitukua can participate fully in the commercial life of Turangi

8.1 Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of properties of note in Turangi owned or formerly owned by a State-Owned Enterprise and with memorials on the titles pursuant to section 27B of the State-Owned Enterprises Act 1986 (detailed in full in Schedule 4(a)).

8.2 Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of Crown-owned properties (detailed in full in Schedule 4(b)) if necessary.

9. Compensation for Ngati Turangitukua to establish a 'Start' Fund

9.1 Ngati Turangitukua seek a cash settlement for the purpose of investment and development of an economic base that will enable the *hapu* to restore and enhance the education, training, health, economic wellbeing and cultural strength of the people.

10. Change of ownership of Reserve Properties

10.1 Ngati Turangitukua seek the return, in fee simple without cost to the claimants, of the ownership of all recreation reserves owned by the Crown in the claim area in recognition that Ngati Turangitukua are *tangata whenua* of Turangi and *kaitiaki* of the natural and spiritual environment there, provided that such reversion may be subject to any special conditions required to guarantee the maintenance of conservation values as mutually agreed upon between the Department of Conservation and the *hapu*. These lands are detailed in Schedule 5.

10.2 Ngati Turangitukua seek a recommendation that the Conservation land be reverted through special legislation if necessary.

11. Regime for the management of conservation lands

11.1 Ngati Turangitukua seek a recommendation that the Department of Conservation give effect to any future *hapu* management plan in the management and development of conservation lands in the Ngati Turangitukua *rohe*.

12. Ancillary claims

12.1 Ngati Turangitukua seek a recommendation that Land Information New Zealand (LINZ) prepare a works programme detailing the outstanding ancillary claims and the time frame within which they will be remedied.

C M Wainwright / K S Feint
Counsel for the claimants

SCHEDULE 1

Wahi tapu Land Which is Sought

<i>Wahi tapu</i> description	Address	CT	Legal description	Area	1995 Govt Valuation
Tē Puke a Ria (Turangitukua House)	130 Atirau Road	34C/191	Section 1 SO35736	2.9827ha	\$240,000

SCHEDULE 2(a)

Land in Industrial B Block Owned or Formerly Owned by a SOE
with a s 27B Memorial on the Title

Ref ¹	Address	CT	Legal description	Area	1995 Govt Valuation
	24 Tukehu Street	39B/619	Lot 9 DP28407	1.3628ha	\$80,000
	135 Atirau Road	34B/571	Lot 12 DP61544	8545m ²	\$145,000
	165 Atirau Road	Part 34B/564	Part Lot 3 DP61544	~ 1.04ha	\$395,000
	16 Tukehu Street	36A/464	Lot 10 DP28407	3966m ²	\$60,000
	57 Tukehu Street	39D/774	Lot 31 DP28407	4029m ²	\$15,000
	65 Atirau Road	39D/775	Section 69 Town of Turangi	2.0335ha	\$10,500

1. The reference number refers in all instances to the map reference.

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SCHEDULE 2(b)

Crown-Owned Land in Industrial Block B

Ref	Address	CT	Legal description	Area	1995 Govt Valuation
26	175 Atirau Rd Ex-Polytechnic Site	42D/699	Lot 11 DP61544	2.4590ha	\$230,000
	145 Atirau Rd	34B/568	Lot 1 DP61544	27.3130ha	\$274,000
		34B/565	Lot 4 DP61544		
16		34B/568	Lot 7 DP61544		
	Atirau Rd/ 11 Dekker Drive	Part 34B/564	Part Lot 3 DP61544	~ 1.70ha	\$190,000
	112 Atirau Rd, Community Corrections	42C/437	Section 1 SO35426	2600m ²	\$150,000
	150 Atirau Rd, Kokiri Centre	44A/734	Section 81 Town of Turangi	2556m ²	\$55,000
	29 Atirau Rd	Proc 2936	Ohuanga North Pt 5A	4.9665ha	\$22,000

SCHEDULE 3(a)

Residential Properties Owned or Formerly Owned by SOEs with s 27B Memorials

Ref	Address	CT	Legal description	Area	1995 Govt Valuation
	58 Hingaia St	39D/130	Lot 3 DP28173	612m ²	\$44,000
	44 Tautahanga Rd	39D/131	Lot 51 DP28175	832m ²	\$57,000
	17 Hirangi Rd	39D/132	Lot 59 DP28116	622m ²	\$44,000
	61 Hingaia St	39D/129	Lot 84 DP28173	610m ²	\$51,000
	24 Te Hei Place	39D/145	Lot 73 DP29457	620m ²	\$53,000
	25 Tureiti Place	39D/144	Lot 43 DP28117	622m ²	\$45,000
	35 Paekiri St	39D/665	Lot 28 DP27771	589m ²	\$43,000
	140 Tautahanga Rd	39D/664	Lot 19 DP27771	1065m ²	\$47,000
	61 Maria Place	39D/117	Lot 64 DP29019	799m ²	\$56,000
	9 Noni St	39D/119	Lot 113 DP28580	645m ²	\$58,000
	30 Mawake Place	39D/125	Lot 71 DP28218	615m ²	\$47,000

Ref	Address	CT	Legal description	Area	1995 Govt Valuation
	98 Puataata Rd	38B/602	Lot 62 DP50584	694m ²	\$281,000 ¹
	14 Ringakapo St	3 8B/601	Lot 47 DP50584	867m ²	
	9 Paekitawhiti St	38B/595	Lot 28 DP50583	798m ²	
	6 Paekitawhiti St	38B/596	Lot 35 DP50583	944m ²	
	44 Ringakapo St	43A/313	Lot 21 DP50583	1069m ²	\$75,000
	4 Harata St	41A/142	Lot 37 DP28175	577m ²	\$15,000
	11 Hingaia St	41A/141	Lot 36 DP28177	584m ²	\$15,000
	1 Te Hei Place	36A/435	Lot 24 DP29460	587m ²	\$15,000
	61 Rangiamohia Rd	39D/128	Lot 124 DP29640	637m ²	\$49,000
	73 Tureiti Place	39D/126	Lot 49 DP28117	655m ²	\$44,000
	5 Tureiti Place	39D/127	Lot 10 DP28117	665m ²	\$45,000
	29 Puataata Rd	39D/124	Lot 123 DP28221	572m ²	\$46,000
	17 Runuku Grove	39D/123	Lot 119 DP29641	647m ²	\$52,000
	12 Te Hei Place	39D/120	Lot 71 DP29457	655m ²	\$42,000
	66 Rota St	39A/932	Lot 1 DP28530	650 m ²	\$46,000
	26 Patikura Place	39D/118	Lot 112 DP28536	562m ²	\$47,000
	39 Rangipoia Place	39A/931	Lot 53 DP27772	665m ²	\$45,000
	30 Runuku Grove	38B/457	Lot 110 DP29641	809m ²	\$50,000
	49 Patikura Place	38D/561	Lot 76 DP28530	658m ²	\$47,000
	42 Ohuanga Rd	39D/776	Lot 4 DP28579	622m ²	\$130,000
	209 Tautahanga Rd	39D/137	Lot 57 DP27350	678m ²	\$47,000
	123 Tautahanga Rd	39D/138	Lot 2 DP27771	943m ²	\$40,000
	14 Poihaere St	38C/941	Lot 145 DP28535	592m ²	\$17,000
	5 Noni St	38D/916	Lot 111 DP28580	718m ²	\$48,000
	63 Tautahanga Rd	36A/465	Lot 99 DP28173	675m ²	\$65,000
	200 Tautahanga Rd	36C/487	Lot 9 DP27350	668m ²	\$52,000
	73 Patikura Place	36C/364	Lot 89 DP28532	896m ²	\$15,500

1. The two Paekitawhiti Street properties have been combined with the properties in Pauataata Road and Ringakapo Street for valuation purposes.

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Ref	Address	CT	Legal description	Area	1995 Govt Valuation
	23 Hinerangi St	36C/176	Lot 98 DP27350	612m ²	\$52,000
	56 Patikura Place	36C/418	Lot 108 DP28536	615m ²	\$65,000
	4 Rangiamohia Rd	36C/365	Lot 226 DP28537	551m ²	\$58,000
	17 Raukura St	36A/463	Lot 51 DP28580	544m ²	\$66,000
	13 Hingaia St	41A/140	Lot 35 DP28174	597m ²	\$65,000
	96 Puataata Rd	38B/607	Lot 63 DP50585	760m ²	\$77,000
	5 Ringakapo St	38B/599	Lot 10 DP50584	815m ²	\$78,000
	28 Ringakapo St	38B/600	Lot 40 DP50584	737m ²	\$74,000
	1 16 Puataata Rd	38B/591	Lot 2 DP50583	840m ²	\$80,000
	42 Ringakapo St	38B/592	Lot 22 DP50583	931 m ²	\$83,000
	38 Ringakapo St/ 1 Paekitawhiti St	38B/593	Lot 24 DP50583	841m ²	\$76,000
	5 Paekitawhiti St	38B/594	Lot 26 DP50583	934m ²	\$75,000
	10 Packitawhiti St	39B/721	Lot 33 DP50583	673m ²	\$78,000
	4 Paekitawhiti St	38B/597	Lot 36 DP50583	910 m ²	\$75,000
	30 Ringakapo St	38B/598	Lot 39 DP50583	1132m ²	\$80,000
	5 Iwiheke Place	37B/423	Lot 51 DP34051	721m ²	\$72,000
	1 1 Paehoro Grove	37A/794	Lot 60 DP28175	688m ²	\$59,000
	13 Paehoro Grove	37A/795	Lot 205 DP28534	647m ²	Unknown ²
	7 Tamakui Grove	37A/796	Lot 183 DP28539	602m ²	\$55,000
	20 Noni St	37A/793	Lot 102 DP28580	592m ²	\$53,000
	20 Whakarau St	37A/792	Lot 83 DP28584	744m ²	\$49,000
*	15 Iwiheke Place	28A/570	Lot 2 DP34051	612m ²	\$86,000
*	1 Parekaranga Grove	34A/834	Lot 3 DP34051	708m ²	\$83,000
*	12 Ringakapo St	30B/368	Lot 48 DP50584	10 1 6m ²	\$77,000
*	15 Wharekaihua Grove	29D/63	Lot 23 DP34051		\$86,000
*	1 1 Paekitawhiti Grove	30B/376	Lot 30 DP50583		\$80,000

2. Valuation New Zealand has no record of this property on its files.

* SOE properties without section 27B memorials. Investigating whether lack of memorial due to administrative oversight.

SCHEDULE 3(b)

Kaumātua houses

Ref	Address	CT	Legal description	Area	1995 Govt Valuation ¹
	35 Mawake Place	28A/501	Lot 5 DP32367	1467m ²	\$49,000
	37 Mawake Place	25A/456	Lot 456 DP32367	1217m ²	\$47,000
	33 Takinga Street	24D/388	Lot 1 DP32367	744m ²	\$46,000
	33A Takinga Street	28A/500	Lot 2 DP32367	809m ²	\$46,000
	A lot on Takinga Street	24D/390	Lot 3 DP32367	986m ²	\$46,000

1. These properties are not included in Valuation New Zealand's report.

SCHEDULE 4(a)

Properties of Note with s 27B Memorials Owned or Formerly Owned by SOEs

Ref	Address	CT	Legal description	Area	1995 Govt Valuation
1	Iwiheke Place	38A/43	Lots 87, 88 and 89 DP29124	1913m ²	\$370,000 ¹
2	Iwiheke Place	38A/45	Lots 82, 83, 84, 85 and 86 and 104 DP29126	3501m ²	
3	Iwiheke Place	37B/422	Lots 99, 100, 101, 102 and 103 DP29127	2930m ²	
4	Iwiheke Place	38A/44	Lots 96, 97 and 98 DP29124	1849m ²	
5	Tautahanga Road, Telecom Exchange	36C/225	Lot 90 DP28176	1171m ²	\$225,000
	33 Turangi Town Centre, NZ Post	33D/241	Lots 26 DP27579	1070m ²	\$585,000
6	Ohuanga Rd (vacant land)	39D/500	Lot 1 DP32621	4072m ²	\$70,000
7	Ohuanga Rd ('Club Habitat')	38D/915	Lot 2 DP32621	3.6573ha	\$850,000
25	State Highway 1 ('Pony Club land')	39D/483	Section 70 Town of Turangi Sections 1 and 2 SO28505 Sections 1 and 2 SO28506	34.6702ha	\$595,000

1. The four Iwiheke Place properties have been added together for valuation purposes.

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SCHEDULE 4(b)

Crown-Owned Properties of Note

Ref	Address	CT	Legal description	Area	1995 Govt Valuation
	33 Turanga Place	GN773733	Section 74 Town of Turangi	5908m ²	\$375,000
	187–9 Tautahanga Rd	38B/684	Lot 51 DP29638	1,3327ha	\$425,000
	5 Wharekaihua Grove	43B/431	Lot 58 DP34051	2428m ²	\$39,000

SCHEDULE 5

Recreation Reserves

Ref	Address	CT	Legal description	Area	1995 Govt Valuation
	27 Te Rewha St	GN276464.1	Lot 41 DP29782	620 m ²	\$13,000
9	Puataata Rd	Gaz 1984 p 649	Lot 4 DP50583	660 m ²	\$45,000 ¹
10	Puataata Rd	Gaz 1984 p 649	Lot 11 DP50584	3049 m ²	
11	Puataata Rd	Gaz 1984 p 649 GN672281.1	Lots 29, 34, 71 and 72 DP50583 Lot 4 DP50584 Lots 52 and 67 DP50585	3,7480ha	
12	Ringakapo St	Gaz 1984 p 649	Lot 42 DP50584	1170 m ²	
15	Taupehi Rd	Gaz 1921 p 2141	Section 1 Block I Turangi Suburban	2492 m ²	\$67,000
18	Taupehi Rd	Gaz 1984 p 3384	Section 8 Block III Pihanga SD	55.6617ha	\$80,000
19	Kutai St	Gaz 1984 p 4520	Sections 36–39 Block v1 Turangi Suburban	3686 m ²	\$130,000
20	Kutai St	GNB432400.0	Sections 1 and 2 SO37359	1,3960ha	\$115,000

1. The three Puataata Road properties are combined with the Ringakapo Street property for valuation purposes.

APPENDIX II

RECORD OF INQUIRY

FIRST REMEDIES HEARING, 27–28 FEBRUARY 1997, HIRANGI MARAE, TURANGI

Tribunal members*

Professor G S Orr
Professor Sir Hugh Kawharu
Professor Evelyn Stokes

Claimant counsel

Carrie Wainwright
Karen Feint

Crown counsel

Peter Andrew
Briar Gordon

Counsel assisting the Tribunal

John Fogarty QC

Staff

Hemi Pou (claims administrator)
Dean Cowie (research officer)

SECOND REMEDIES HEARING, 14–16 JULY 1997, HIRANGI MARAE, TURANGI

Tribunal members

Professor G S Orr
Professor Sir Hugh Kawharu
Professor Evelyn Stokes

* Hepora Young, who was a member of the original Turangi township Tribunal, died on 5 December 1996.

Claimant counsel

Carrie Wainwright
Karen Feint

Crown counsel

Peter Andrew
Briar Gordon

Staff

Pam Wiki (claims administrator)
Dean Cowie (research officer)

RECORD OF PROCEEDINGS

The record of proceedings and record of documents continue on from the records reproduced in the *Turangi Township Report 1995*, Wellington, Brooker's Ltd, 1995.

1. CLAIMS

1.1

- (w) Application for resumption of land under the Treaty of Waitangi Act 1975
- (x) Amendment in respect of remedies, 9 October 1996
- (y) Second amendment in respect of remedies, 19 December 1996
- (z) Letter from claimant counsel to withdraw parts of the Turangi claim, 7 February 1997
- (aa) Letter from claimant counsel to withdraw parts of the Turangi claim, 25 February 1997
- (ab) Letter from claimant counsel to withdraw paragraphs 12, 13 of claim 1.1(y), 21 May 1997
- (ac) Third amended statement of claim in respect of remedies, 27 June 1997

2. PAPERS IN PROCEEDINGS

- 2.38 Claimant counsel application for urgent conference, 16 July 1996
 - (a) Memorandum in support, 16 July 1996
- 2.39 Tribunal memorandum to arrange remedies hearing, 2 August 1996
- 2.40 Crown counsel memorandum in relation to remedies hearing, 7 August 1996
- 2.41 Claimant counsel memorandum in relation to remedies hearing, 7 August 1996
- 2.42 Crown counsel memorandum on issues relevant to the remedies hearing, 17 September 1996

- 2.43** Tribunal memorandum following a conference on 17 September 1996, 18 September 1996
- 2.44** Tribunal directions to register amendment (claim 1.1(x)), 16 October 1996
- 2.45** Tribunal memorandum following a conference on 11 November 1996, 12 November 1996
- 2.46** Tribunal directions to register amendment (claim 1.1(y)), 23 December 1996
- 2.47** Notice of first remedies hearing, 6 January 1997
(a) Dispatch of notice of first remedies hearing, 15 January 1997
- 2.48** Memorandum of claimant counsel for Wai 45 and Wai 400 seeking leave to be heard on the standard of proof issue, 29 January 1997
- 2.49** Crown counsel memorandum opposing application for leave to be heard on the standard of proof issue, 30 January 1997
- 2.50** Notice postponing first remedies hearing and setting a new fixture, 3 February 1997
(a) Dispatch of notice postponing first remedies hearing, 3 February 1997
- 2.51** Tribunal memorandum relating to first remedies hearing, 10 February 1997
- 2.52** Vacant
- 2.53** Notice of second remedies hearing, 18 February 1997
(a) Dispatch of notice of second remedies hearing, 19 February 1997
- 2.54** Vacant
- 2.55** Memorandum on behalf of counsel for Wai 45, 55, 119, 168, and 400 in respect of the Tribunal's jurisdiction under section 8A of the Treaty of Waitangi Act 1975, 26 February 1997
- 2.56** Notice postponing second remedies hearing, 5 March 1997
(a) Dispatch of notice postponing second remedies hearing, 5 March 1997
- 2.57** Tribunal decision on standard of proof issues, 25 March 1997
- 2.58** Tribunal directions concerning continuation of hearings, 1 May 1997 (Wai 262 record of inquiry, paper 2.26) (Wai 201 record of inquiry, paper 2.222)
- 2.59** Tribunal directions to register amendment to second amended statement of claim, 28 May 1997
- 2.60** Notice of remedies hearing, 25 June 1997
(a) Dispatch of notice concerning remedies hearing, 25 June 1997

2.61 Tribunal direction to register third amended statement of claim in respect of remedies (claim 1.1(ac)), 2 July 1997

2.62 Notice of third amended statement of claim, 3 July 1997

RECORD OF DOCUMENTS

* Document held in the Waitangi Tribunal library, Waitangi Tribunal offices, third floor, 110 Featherston Street, Wellington

The name of the person or party that produced each document or set of documents in evidence appears in parentheses after the reference, except where that source is already apparent.

D15 Waitangi Tribunal, *Turangi Township Report 1995*, Wellington, Brooker's Ltd, 1995 (registrar)

D16 Crown submission in response to claimants' application for a remedies hearing, 30 July 1996

D17 Documents in relation to the Turangi township (filed 15 October 1996) (Crown counsel)

(a) Certificates of title for Crown and State-owned enterprise properties, undated

(b) Valuation New Zealand Limited property information, undated

(c) Letter from Valuation New Zealand Limited, 4 October 1996, and category group codes

(d) Schedule of properties in the Turangi township prepared by the Office of Treaty Settlements, undated

(e)* Map showing Crown lands in Turangi, undated

D18 Crown submission on the standard of proof in relation to an application for binding orders under section 8A of the Treaty of Waitangi Act 1975, October 1996

D19 Updated schedule of properties in the Turangi township prepared by Office of Treaty Settlements, undated (Crown counsel)

D20 Crown submission on standard of proof in relation to binding recommendatory jurisdiction of Tribunal, 27 February 1997

D21 List of authorities, Turangi, undated (Crown counsel)

D22 Outline of submission of claimant counsel, undated (filed 27 February 1997)

(a) Claimants' further submissions in response to Crown submissions, 28 February 1997

D23 Submission by J G Fogarty QC on standard of proof, undated (filed 10 March 1997)

E. TO END OF SECOND REMEDIES HEARING

E1 Submission by David James Alexander, June 1997 (Crown counsel)

(a) Supporting documents to document E1 (volume 1)

(b) Supporting documents to document E1 (volume 2)

(c) Supporting documents to document E1 (volume 2 continued)

(d)* Plans showing land title information for Ohuanga North 5

(e)* Plan showing land title information for Hautu 3

(f)* Plan showing land title information for Tokaanu B1

(g)* Plans showing land title information for Waipapa 1

(h)* Set of aerial photographs of the Turangi area taken in 1964, numbered A/1 to A/5

E2 Submission by Nick Taylor, 'A Social and Economic Impact Assessment of the Development of Turangi Township', June 1997 (Crown Law Office)

E3 Submission of Mahlon Nepia, undated (filed June 1997) (claimant counsel)

(a) Further evidence of Mahlon Nepia

E4 Submission of Arthur Grace, undated (filed June 1997) (claimant counsel)

E5 Submission of Eileen Duff, undated (filed June 1997) (claimant counsel)

E6 Second brief of Arthur Grace, undated (filed July 1997) (claimant counsel)

E7 Schedule of properties in the Turangi township, undated (filed July 1997) (Crown counsel)

E8 Information from the Maori land information base prepared by Te Puni Kokiri showing Maori-owned land in the Turangi-Tokaanu area, July 1997 (Crown counsel)

(a) Remaining Maori freehold land in the Turangi area

E9 Heads of agreement for Tongariro power development land compensation claims Maori owners, 30 November 1972, with a copy of the deed between the trustees of Lake Rotoaira and the Crown (Crown counsel)

E10 Brent Parker, 'Notes to accompany the Turangi family/groups compensation figures', undated (Crown counsel)

E11 Claimant counsel's opening submissions, 14 July 1997

E12 Crown counsel's opening submission on remedies, 15 July 1997

(a) Key figures

(b) Schedule of properties (based on the third amended statement of claim)

(c) Schedule of properties in rohe of Ngati Turangitukua

E13 Claimant counsel's closing submission concerning remedies, 16 July 1997

- E14** Crown counsel's closing submission concerning remedies, 17 July 1997
- E15** Crown counsel's closing submission concerning remedies, 17 July 1997
- (a)(1) *New Zealand Gazette*, 23 November 1978
 - (a)(2) *New Zealand Gazette*, 14 March 1996
 - (a)(3) *New Zealand Gazette*, 14 March 1996
 - (a)(4) *New Zealand Gazette*, 29 August 1996
 - (a)(5) Localities: lot 41 DP29782
 - (a)(6) Localities: lot 41 DP50583
 - (a)(7) Localities: lot 11 DP50584
 - (a)(8) Localities: lot 34 DP50583
 - (a)(9) Localities: lot 67 DP50585
 - (a)(10) Localities: lot 29 DP50583
 - (a)(11) Localities: lot 71 DP50583
 - (a)(12) Localities: lot 42 DP50584; lot 4 DP 50584
 - (a)(13) Localities: section 1 block 1 Turangi SBFN
 - (a)(14) Localities: section 8 block 111 Pihanga survey district
 - (a)(15) Localities: section 1, 2 SO37359
 - (a)(16) Appendix 1: schedule of individual Turangi township ancillary claims and progress to date with the settlement
- E16** Revised schedule of Turangi properties (Crown counsel)
- (a) Valuations, Turangi township
 - (b) Properties sought by Ngati Turangitukua (summary tables)
 - (c) Schedule of properties in rohe of Ngati Turangitukua
 - (d) Schedule of properties (based on the third amended statement of claim)
- E17** Crown submissions on other remedies, 1 August 1997
- E18** Deed of settlement between the Crown and Whakatohea, 1 October 1996
- E19** Deed of settlement between the Crown and Waikato, 22 May 1995
- E20** Agreement between the Crown and Ngati Whakaue concerning Wai 94, 23 September 1993
- E21** Brent Parker, 'The Development Debt on the Tokaanu Development Scheme', undated
- E22** Affidavit of Mahlon Nepia, 18 November 1997[†]
- E23** The Ngati Turangitukua Charitable Trust deed, 9 November 1997
- E24** Claimants' reply to Crown's submissions, 23 December 1997 (formerly paper 2.63)

[†] Exhibit 7 to document E22 is to be kept confidential, and no part is to be inspected without the prior approval of The Ngati Turangitukua Charitable Trust.

