

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 Whakauae 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 S035426 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

