What are we claiming for?
Summary of Statements of Issues 1 – 6 .

1. Tino Rangatiratanga
2. Old Land Claims, scrip and surplus lands
3. Crown Purchases
4. Native Land Court
5. Maori Land Alienation
6. Maori Land Development and Administration

A. Te Rohe O Whangaroa

Timatanga, Oruru tae noa ki te awa o Orua-iti. Me huri aku kamo ki te whatu o Parikahana i Mangonui, i Taipa. Whakawhiti atu ana ki Maungataniwha ki te hauauru o Otangaroa tae noa atu ki te ngahere o nga puke titi o te waka o Mataatua. I rere tenei o nga manga ra roto whenua, ra runga whenua o Waipapa, o Te Whau, o Upokorau. I marere atu au ki te moana o Takou ki te awa o Te Kopua Kawau te wahi i takoto mai ana te waka tupuna o Mataatua. Toro atu ki te takutai o Te Rawhiti, me huri ano te kanohi ki Te Pokopoko o Hine-nui-te-po me Te Urenui o Maui-potiki. Mai i Te Aukanapanapa, he tohu mo te ara takutai moana tae noa atu kite tuawhenua ki a Tangitu.
(He korero na Arapeta Taniora)

Prior to 1840 Whangaroa Hapu exercised undisputed mana and absolute tino rangatiratanga over their ancestral lands, people and resources. Whangaroa Hapu have operated their affairs independently, in accordance with tikanga. It is submitted that while Whangaroa Hapu mana and rangatiratanga have been deliberately subverted by the Crown, in breach of Te Tiriti o Waitangi, Whangaroa Hapu have never relinquished their mana and tino rangatiranga over their land, people and resources.

B. Statement of Issues

1. Tino Rangatiratanga

Waitangi Tribunal Stage 1 finding.

In February 1840, the rangatira who signed Te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and Hobson were to be equal - equal while having different roles and different spheres of influence. In essence, rangatira retained their authority over their hapū and territories, while Hobson was given authority to control Pākehā.

DUTIES

At all times the Crown had duties to:

a. Honour He Whakaputanga as a founding document in the Maori and Crown relationship and the assertion of sovereign independence and expression of tino rangatiratanga by rangatira.
b. Honour Te Tiriti o Waitangi as the document acknowledged, agreed to, and signed by Rangatira, particularly with regard to the retention of tino rangatiratanga.
c. Recognise and actively protect the rights and interests of Whangaroa Hapu under Te Tiriti o Waitangi and it's principles.
d. Ensure Whangaroa Hapu retain their lands, estates, forests, fisheries, other properties and taonga so long as it is their desire to do so.
e. Ensure that Crown practices, policies and legislation permitted Whangaroa Hapu to develop their land as they saw fit.
f. Ensure that Whangaroa Hapu were left with a sufficient land base and resources for their social, cultural and economic needs both for customary purposes and to develop in the new economy.
g. Recognise and actively protect the lore, customs, cultural and spiritual heritage of Whangaroa Hapu.
h. Consult with Whangaroa Hapu and obtain consent for measures which might affect or diminish their rangatiratanga and autonomy such as the introduction of the Native Land Court, Local Government and public works regimes.
i. Ensure Whangaroa Hapu were provided with the means to develop, exploit and manage their resources in a manner consistent with their cultural preferences.
j. Consult with Whangaroa Hapu over any survey and rating regime, and obtain their consent to the same.
k. Actively protect Whangaroa Hapu and their lands and resources to the fullest extent practicable.
l. Act honourably, reasonably and with the utmost good faith towards Whangaroa Hapu.
m. Provide good governance and equality of treatment, including between Maori and settler communities.
n. Extend to Whangaroa Hapu all the rights and privileges of British Subjects

o. Adopt a fair process in any dealings with Whangaroa Hapu and their lands and resources.
p. Ensure that it did not divest itself of its Te Tiriti obligations by conferring an inconsistent jurisdiction on local authorities.
q. Act in accordance with the principle of partnership under Te Tiriti o Waitangi.
r. Ensure that Whangaroa Hapu were provided with the same economic development and sustainability opportunities as British citizens.
s. Provide Whangaroa Hapu with a form of community title more reflective of customary rights which recognised tribal and communal land rights, to which individual rights were subordinate.
t. Ensure that Whangaroa Hapu were able to decide their own land entitlements according to their own lore, and tikanga.

Whangaroa Hapu have not ceded sovereignty or tino rangatiratanga or any other concept of absolute authority to the Crown since the signing of Te Tiriti. Whatever sovereignty the Crown currently has was taken by the deliberate subversion of Whangaroa Hapu tino rangatiratanga through the various acts and omissions of the Crown, or its agents…Therefore whatever purported sovereignty the Crown currently holds has been acquired and upheld in breach of Te Tiriti principles of active protection, partnership, options, and autonomy.

The Crown has undermined the ability of Whangaroa Hapu to live autonomously and in such a way that allowed them to manage their own social groupings and protect their political and economic rights. The Crown breached Te Tiriti and as a result Whangaroa Hapu were no longer able to choose the way in which they wanted to develop, socially, culturally and economically, within the bounds of their tikanga, as was preferred. Whangaroa Hapu have been given little option, but to assimilate to the Pakeha way of life without regard for their Te Tiriti-protected right to choose the extent to which they wished to do so.

2. Old Land Claims, Scrip and Surplus Lands

The Crown has breached its Te Tiriti duties of active protection, development and mutual benefit by:

a. Failing to fully investigate the purported purchases of land, which occurred prior to 1840, between Whangaroa Hapu and private "purchasers" in Old Land Claims transactions.
b. Failing in its subsequent attempts to fully investigate into purported pre-1840 "purchases".
c. The Crown has acknowledged that Iwi living in Whangarei and Whangaroa sub regions of the Te Paparahi o Te Raki Tribunal Inquiry are now virtually landless and the Crown's failure to ensure that they retained sufficient land for their present and future needs was a breach of Te Tiriti o Waitangi and it's principles.

Counsel acting on behalf of the Whangaroa claimants adopt the generic closing submissions on Old Land Claims which explain that the Crown's objective was to extinguish Maori customary title through the Old Land Claims process and agree with Bruce Stirling's statement that the Crown intended to obtain significant direct benefit from the Old Land Claims process, and it did so. The principle direct benefit was from surplus lands.

The impact on Whangaroa Maori of Crown policies and practices for the investigation and granting of Old Land Claims, including the Crown's taking of surplus land and scrip land, has been understated and misrepresented by the Crown.

Earlier in the inquiry the Crown conceded that about 16 per cent of Whangaroa district land had been alienated as a result of the Crown's treatment of the Old Land Claims which was based on the following Crown data:

Whangaroa OLCs

Granted to claimants:	16,998 acres
Surplus land	13,216 acres
Scrip land	5,038 acres
Total	35,252 acres

The Crown has subsequently revisited these figures, relying on the evidence of Dr Barry Rigby. However, Dr Rigby's evidence includes only total acreages for Te Paparahi oTe Raki inquiry district and does not

provide a breakdown for the Whangaroa inquiry district. The Crown now provides the following data for Whangaroa:

Granted to claimants:	11,491 acres
Surplus land	3,890 acres
Scrip land	3,605 acres
Total	18,986 acres

Based on this data, the Crown concludes about nine per cent of the Whangaroa lands were lost to Maori through Old Land Claims processes. This is approximately half the area and half the percentage given in the Crown's first set of data.

In any event, both sets of Crown data are incorrect. The correct Whangaroa data is as follows:

Granted to claimants:	29,514 acres
Surplus land	20,884 acres
Scrip land	4,813 acres
Total	55,211 acres

The area of Whangaroa land lost to the Crown's Old Land Claims process is about 25 per cent of the Whangaroa district. As such it represents a significant and unjustified early loss of land.

3. Crown Purchases

The Crown, in breach of its duties, adopted unfair purchasing practices to acquire land from Whangaroa maori. The Crown also failed to keep its promises of fair treatment and mutual benefit from these transactions.

Pre-emption

The Crown, in breach of its duties, took unfair advantage, for its own benefit, of a requirement that from 1840 to 1864 Te Raki Maori could only sell their land to the Crown.

Particulars:

a. By “pre-emptive right” the Crown did not mean right of first refusal, but sole right to purchase Maori land, giving itself a monopoly which it could protect through its coercive powers.
b. This Crown policy essentially created a monopoly on purchasing land in Northland which meant Whangaroa Maori had no choice but to sell to the Crown and consequently receive low payments. <u>This allowed the Crown to profit substantially from Maori loss of land.</u>

<u>Pre-emption Waiver and “Waste Lands”</u>

Particulars

a. In March 1844, Governor FitzRoy waived pre-emption and allowed direct private purchases to take place on payment of a ten shillings per acre tax. This was due to the need to maintain healthy capital for the colony, which was suffering from an economic downturn and combined opposition from both Maori and settlers to the Crown’s pre-emption policy.
b. By October 1844 the tax had been reduced to one penny per acre, leading to rapid alienation of land.

4. Native Land Court

<u>Purpose of The Native Land Court Establishment</u>

The Crown, in breach of its duties, established the Native Land Court pursuant to the Native Land Act 1862 to investigate and extinguish Maori customary title and to convert traditional modes of ownership into individual titles, was imposed on Maori without their agreement or consent, was contrary to tino rangatiratanga and in breach of the principles of Te Tiriti.

At 1840, Whangaroa Hapu lands were held by each Hapu in accordance with tikanga. A great deal of Whangaroa Hapu lands were alienated through the Native Land Court process.

The Re-formation of the Native Land Court in the North and Native Land Act 1865 was intended to erode tribal structures and conform the Native Land Court as closely as possible to the English legal forms.

Particulars

a. The Act permitted blocks of over 5,000 acres to be granted to no more than 10 individuals, this is referred to as the "ten owner rule,"
b. Maori judges were demoted to the role of Assessors, and could no longer outvote the Pakeha judge.
c. Attempts by Rangatira to exercise any tribal control over the land title adjudication process were rejected.
d. Any individual Maori could now make an application to the Court.

5. Maori Land Alienation

The Crown, in breach of its duties, manipulated the Native Land Court process to acquire land from Whangaroa Hapu. In doing so, the Crown engaged in a deliberate policy of undermining the customary ownership and mana of Whangaroa Hapu over their lands through the operations of the Native Land Court.

Particulars

The Crown manipulated the Native Land Court process by acquiring substantial interests from individuals and then applying to the Native Land Court to have those interests partitioned out.

a. The Native Land Court system at the time seemed to demean Maori by allocating them legally defined areas without recognising that the tribal system depends on a very different type of land ownership and usage.

6. Maori Land Development and Administration

The Crown breached its Te Tiriti duties and obligations by:

a. Failing to recognise Whangaroa Hapu rangatiratanga and mana whenua over their land;
b. Failing to assist Whangaroa Hapu to develop and administer their lands and resources to the fullest extent practicable;
c. Failing to provide sufficient capital and training to assist in the development of their land and resources; and
d. Failing to assist, provide or attempt to establish another viable option outside of development schemes which could have benefited multiply-owned Maori land.

The development schemes, however, were another of the Crown's twentieth century policies which deprived Maori of the ability to control their own land. The Crown assumed complete administrative control over these schemes. The Crown made the costs of development schemes a charge against the land to be recouped from profits made by the farms that were developed. The Crown also used the establishment of development schemes to resolve outstanding survey liens and rates affecting Maori land.

The legislation which established development schemes suspended most of the owners' rights over the land notified for the schemes, and the Crown exercised almost complete control over the land it was developing.

Development schemes were yet another method the Crown used to stamp upon Maori rangatiratanga and mana whenua in Whangaroa and the wider Te Paparahi o Te Raki region.