

**Wai686#S6**  
**Wai369#A12**

**BEFORE THE WAITANGI TRIBUNAL**

**IN THE MATTER OF**

The Treaty of Waitangi Act 1975

**AND**

**IN THE MATTER OF**

A claim by Horimatua Evans on behalf of  
himself and his whanau

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**BRIEF OF EVIDENCE OF GRAEME THOMAS FOSTER**  
**DATED 2001**

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## **Background**

1. My name is Graeme Thomas Foster. I am a Registered Valuer, and have been registered since 1970.
2. I am a Fellow of both the New Zealand Institute of Valuers, and the New Zealand Property Institute. I am also an Associate of the Real Estate Institute and am the holder of a Diploma of Agriculture from Massey University.
3. Since 1994 I have been self-employed as a Public Valuer and Property Consultant in my firm of G.T. Foster & Associates Ltd. My principal area of employment since 1994 has been in the provision of updated rental reviews for Crown Forest Licences throughout New Zealand.
4. Prior to commencing business on my own account I was employed for 28 years by the former Valuation Department, now Quotable Values Ltd, principally upon the East Coast, between Masterton and Whakatane.
5. I was District Valuer, Gisborne, between 1980 - 1989. The District comprised all properties between Lake Tutira and Ohiwa Harbour. As part of my duties I was the Valuer General's Statutory representative upon the Maori Affairs District Committee for Tairāwhiti. Mr G. Evans was chairman of the District Committee for part of that period, followed as chairman by Mr Lou Tangaere.
6. In 1989 I was seconded to Head Office Valuation Department, to stand in as Manager, Valuation Services, for Mr R. Calderwood, who was overseas. As part of my duties I was the Valuer General's Nominee upon the Board of Maori Affairs.

## **My time on the Board of Maori Affairs**

7. I sat on the Board of Maori Affairs for a period of approximately four months, and was present at around four meetings. The functions of the Board mainly involved the administration of the Maori Affairs Act 1953.

8. Other Board members at the time included Sir Graham Latimer, Sir John Bennet, Niko Tangaroa, Sir Robert Mahuta, Dr Tamati Reedy and Mr Richard Fox from Tuwharetoa. Peter Little was Director for Land Development at the Maori Affairs Department at the time, and he was also present at the Board meetings.
9. All Board or District Committee decisions were subject to the approval of the Minister of Maori Affairs, on behalf of the Government. During my term the Minister approved all Board decisions with one exception.

### **Board meeting on 15 July 1989**

10. That occasion was on 15 July 1989, when George Evans and his lawyer attended a Board meeting. The minutes are attached to my evidence and marked "A". Mr Evans and his lawyer made an appeal for the refund of Mr Evans' deposit on the Waiheke Island farm, plus interest.
11. The Minister, Koro Wetere, was absent from the meeting
12. The Board was in no doubt that Mr Evans had been forced off the land because of the protests of people assuming that he was not of Ngati Paoa origin, and the subsequent Waitangi Tribunal recommendation.
13. A considerable discussion ensued, mostly in Maori, with which I am not conversant. Sir Graham Latimer was affronted by the inference he had insufficient *Mana* to obtain redress for George, and a heated discussion followed.
14. At the conclusion Sir Graham, on behalf of the Board, said  

*"You will get your Koha back, you will leave the Island, and it will be as if you had never been."*
15. This was a repetition of the decision made at a meeting in Kawhia in 1987, where the Board's sub-committee had comprised Messrs Mahuta, Fox and Latimer.
16. The Board was informed (at the foot of page 18, and top page 19) that the 1987 Board minutes as recorded did not give effect to the decision

made at Kawhia in the manner the Board members had verbally agreed and intended.

17. At the meeting in 1989, apart from the words *"It will be as if you have never been"* there was no mention of interest on capital, but it may have been taken for granted.
18. Mr Evans' withdrawal from the meeting was followed by considerable further deliberations.
19. From the discussions I am clear in my mind that the Board wished to give effect to the decision offered at Kawhia in 1987, *"That George get his deposit back, the stock will be sold, and all debts cleared"*.
20. The decision of the Board meeting 12 July 1989 as recorded was *"That the Board consider recommending to Cabinet that an "Ex Gratia" payment be made to the Evans family"*. I feel this was the only option open to the Board at that time, being the result wished by those present.
21. My interpretation is that the Maori Board members wished Mr Evans to be placed in the same position he was in prior to his settlement at Waiheke, *"as if he had never been."*

#### **Valuation template - as if a Public Works Act taking**

22. At that meeting some discussion took place regarding the method of determining the loss in value or saleability occasioned by the Waitangi Tribunal's recommendations. With regard to the loss in value between original and current values, the Board requested that officials liaise with Valuation New Zealand to obtain a report for consideration at the next meeting.
23. The Board requested a valuation to determine the extent of the losses.
24. I undertook to provide the Board with a report methodology, which would normally apply in a situation where the property had been compulsorily acquired under the Public Works Act.

25. I was not provided with sufficient financial data to provide a complete valuation under the Public Works Act. I prepared a report for the Board's consideration as required. The report is attached to my evidence and marked "B". It is based upon Valuation Departmental records. I did not conduct a physical inspection of the property myself.
26. Page 1 of the report summarises the basis for the report.
- (a) *"A restriction to the open market sale of the property was created by the Waitangi Tribunal decision; and*
  - (b) *" That a statutory right for compensation would have occurred had the land been taken under the Public Works Act.*
27. The conclusion reached upon page 2 of the report summarises my estimate of the claim procedure which would be required to be followed under the Public Works Act.



#### **Outcome of the Board's resolution**

28. The following month, the Minister Koro Wetere, attended the meeting. He refused to ratify the Board's decision, and said, *"George has had all he is going to get"*. None of the Board members said a word, although the effect was devastating, given the statement previously made by Sir Graham.
29. The Minister gave no reason for his decision in my hearing, although I formed the opinion he was enraged George brought his solicitor to the meeting, and had requested the return of his deposit plus interest.
30. In the light of the Minister's decision, my report was not discussed.
31. I have not been involved in any further action or development since that time.

**DATED THIS                      DAY OF    2001**

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**GRAEME THOMAS FOSTER**

"A"

**Wai 686 #S6 (a)**  
**Wai 369 #A12 (a)**

<b>BOARD OF MAORI AFFAIRS</b>	
<b>EXTRACT</b>	from the Minutes of
the Board meeting held on	
DATE: <i>12 July '89</i>	MIN. No: .....
<i>P. B. Little for</i> SECRETARY	

20. Waiheke Island Development Scheme:  
Evans Family Lease (Supplementary Paper)

Dr Reedy said that he understood that this matter had been discussed at the previous meeting and he made reference to the relevant resolution. He then invited Mr Parore to speak to the matter.

Mr Parore confirmed Dr Reedy's understanding to be correct and said that he was pleased that Mr Woods, Office Solicitor, Head Office was here and would be able to comment appropriately.

Mr Parore said that lengthy discussion on the matter had ensued at the previous meeting and he outlined the events and discussions leading up to today's meeting. He said that basically Mr Evans felt that he had not been treated in a way that enabled him to walk away with a reasonable amount of dignity intact and that he had certainly been given an undertaking going back to the tangi for the late Hori Forbes, and the meeting of the Sub-Committee of the Board which took place at that time, so he was looking really at some redress that could be given. Mr Parore then outlined recent approaches by Mr Evans to the Minister and departmental officers which had led to the paper that was considered by the Board at the last meeting. He said that there was a suggestion that we may give a cash settlement (a figure of \$200,000 was mentioned) plus the main suggestion that a Sub-Committee from the Board meet with Mr Evans. He said that the feeling was that the full Board on a 'no commitment' basis should listen to Mr Evans.

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subsequent to that summary, Mr Parore said that Mr Evans, along with his Counsel, Mr G. M. Howley of Auckland are ready to meet with the Board. He said that the procedures will be for this above named to meet the Board, and following their appearance and discussions, the Board would then, and after the departure of the visitors discuss the matter with a view to resolving what, if any, action required to be taken. Mr Parore concluded by summarising the contents of the relevant paper.

At this time Mr Evans and his Counsel entered and were welcomed by the Chairman who said that the Board has agreed to hear their case and invited Mr Evans and his Counsel to address the Board. He said that the Board has been fully briefed of both the legal positions and the relevant background.

Mr Evans then spoke, a transcript of which is shown below:

Members are requested to note that the officer who undertook the aspects relative to the following Maori transcripts for the purposes of these minutes experienced considerable difficulty due to the lack of clarity of the recorded discussions which was further compounded by background noise for a number of sources.

Kia ora ra tatou i tenei rangi. Ki te Poari ra, kia koe hoki e te tuakana e Tamati te tononga ai kia watea ahau ki te haere mai ki konei ki te whakatakoto i raro Poari te ahua e pa ana ki a au me toku whanau i tenei ra. I hara mai nei tatou nei kei te karanga aha ra te iwi Maori i roto i te Tiriti o Waitangi. Engari me ata titiro tatou kia tatou nei, pehea ana tena, tena, tena i nga ahua o te Tiriti. No reira i runga i tera ahuatanga, i raro i te maru o Te Tiriti, i haere mai au ki konei i tenei ra, ki te whakamarama ki a koutou nga ahuatanga e pa ana ki a au. No reira, tena koutou, tena koutou i roto i tenei whare rangatira o tatou, kei konei tatou huihui ai. No reira, kaore au te pirangi tenei te taha i au. Pirangi ke maku tonu aku hiahia kia koutou, engari te tononga mai o to koutou hekeretari, Parore korero mai ai ki au, pai ke tana haere mai ki konei. Nga taha e pa ana ki te ture hanga hohonu nei kaore au te mohio. Ki a au nei me ahua tatu te take nei ki runga i te ahuatanga o te Tiriti, i runga i te ahuatanga a o tatou rangatira, tino rangatiratanga mo tenei ra. Tapaina te oranga ki reira. Na reira, tena koe, tena koe.

Mr Evans then called upon his Counsel, Mr G. M. Howley to address the Board.

Mr Howley said that the Board has had a fairly lengthy summary of the various matters which concern Mr Evans and he tabled copies of those.

At this stage Dr Reedy took the opportunity to say that he wished to make it very clear from the outset that this meeting is held without prejudice and that the Board has consented to hear Mr Evans out on the issue.



10.

Mr Howley said that really the matters that concern Mr Evans are the fact that when he went in to the lease he had to pay a large sum of money originally, a little over \$400,000 when he went in there. Mr Howley said Mr Evans went in there on the basis that he was buying the lease and a certain amount of stock.

He proceeded to say that at the time Mr Evans entered into negotiations, he did not realise that there was another problem, which was really an argument as to the ownership of the island to start off with, and inherent in that, clearly - now looking at it on hindsight of course - was the right of anybody, including the department, to lease it to anyone at all, and he would refer obviously to the rights of the Ngati Paoa on Waiheke.

Mr Howley said that it seems to him that it could easily put up an argument that there was no right to lease the place in the first place - that is Waiheke - because of the fact that it must have been known to the department, not only that there were problems but claims being made by the Tribe which subsequently were up held by the Waitangi Tribunal. He said that even : that was put to one side, the reasons for forfeiting the lease first of all were because of the non-payment of rent, and also for various matters which he said he did not think needed to be gone into in detail, claimed to be breaches of the lease apart from payment of rent. He said that the rent, before the rights of the lease were exercised, was paid up to date, and therefore could not be proceeded on that basis.

Mr Howley said that Mr Evans does not believe, and looking at it as objectively as one can, the fact that Ngati Paoa were in the background and by then a decision had been made by the Waitangi Tribunal is coincidental. He said that the clear finding of the Tribunal - and he suggested it would be the only proper one under the circumstances - was that there should be a discussion at least and hopefully discussion between the Tribe and Mr Evans because of the Waitangi Tribunal, as he had said on numerous occasions, was not going to try and remedy one injustice by perpetrating another injustice, and he said it was fully aware of the fact that Mr Evans had the lease on the property, but is also very clear in its view that the Ngati Paoa had the right to the occupation and ownership of the island and that therefore the decision of the Tribunal very briefly as far as it concerned Mr Evans was very clear that negotiations should then take place between Mr Evans and the Tribe to see what accommodation could be reached to satisfy both of them. He said that the fact of the matter is that the only two parties that have been satisfied has been the Tribe. Mr Howley said that he could say on Mr Evans behalf that he is not arguing about the rights of the Tribe to the island nor suggesting that in the end they should not have been there or should now be there. He said that that is not the argument.

11.

Mr Howley said that the fact of the matter is that the lease was determined . on what certainly appear to be grounds which are suspect in the sense that while they clearly provide for under the lease, various of the matters that he is supposed to have not done, he could not do, and that was because of the inaction of the department or the Local Body or a combination of both in many cases, for example payment of rates was one of the reasons given, fencing the property, clearing it of scrub and gorse etc, were another two, but he said that for any of those things to have taken place, Mr Evans would have had to have a lease of a specified part of the land. He added that from the time Mr Evans went in there, he was told that the land that apparently had been farmed, was not the land that was being offered for the lease, that surveys were being done, new Titles would be issued and he would know where he was. Mr Howley said that none of these things were done and that Mr Evans had done a lot of fencing on the land, but he was not going to fence land, or clear land which was not his. He said that equally applied to the payment of rates. Mr Howley said that Mr Evans paid rates on what he knew was his, and didn't pay rates on what he believed was not going to be his in any event.

Mr Howley said he was not going to go into all of those things but said that generally gives Mr Evans a right to argue about the validity of taking over the lease. He stated that the result of it was that Mr Evans was deprived, and added that he is not arguing about the fact that he was having financial problems, but anyone under those circumstances is either able to overcome their financial problems by trading out of it, or by selling out, but Mr Howley said that because of the fact that there was a downturn in farming at the time, the likelihood of trading out of it was pretty remote and the thing was so bad, that as many members will remember, there were various offers made to farmers for reducing payments either under mortgage interest rates, or generally to give some sort of help to enable mortgages, but this was tried by Mr Evans and nothing ever happened. Mr Howley said that Mr Evans had never been refused, but nothing ever happened.

He added that during this, the property was taken over and Mr Evans lost the opportunity of either selling out to the highest bidder, which probably is a theoretical right that he had under the circumstances because it was highly unlikely that any other person other than Ngati Paoa could have made any kind of bid for it in the face of the decision of the Tribunal. Mr Howley said that Mr Evans accepts that, but said that he did not even have a chance to deal with the Ngati Paoa. Mr Howley said that Mr Evans has lost a lot of money - something in the region of hundreds of thousands - but subsequent to that happening, that is the taking over or it, he had meetings with representatives and he was promised that he would come out of it being no worse off. Mr Howley said he could not remember the exact phraseology but he would ask Mr Evans to confirm. He asked Mr Evans "What were you told please?"

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Mr Evans replied "This is recapping the meeting we had at Kawhia, and the discussions with the Board Sub-Committee there, was that - and the discussions were in Maori - it was, as that meeting, it was agreed to that te koha o toku whanau i takoto mo Waiheke me hoki mai ki a au. Tera te noho watea ahau ki te haere. Ka whakaae au ki tera. I motiningia te motini a Ratima, na Te Takuta i tautoko. Tera wa, kua koa te ngakau. Hoki au ki te kainga ka korero au ki taku whanau, kua whakaaengia kia hoki mai te koha i takoto i a matou ki Waiheke. No reira, kua noho mama matou te rapa ano he whenua mo aku tama, mo ratou. Engari no muri ra, no muri i tera hui, ka haere au ki te apiha o te poari i Hamutana. Whakaatu atu au ki a ia te wa ka noho watea te whenua ra ki te poari. Korero atu au ki a ia, na tonu nga kararehe me nga wuuru a te Noema me mauria te whenua. I tera wa ka puta mai nga ahua o te whenua ki a ratou ki te poari, engari ma nga moni e whakarite nga nama, nga nama kei runga i te whenua, ara, nga nama e pa ana ki te peeke. No reira ka hoki mai te apiha o te poari i Hamutana ki a au. Kare i whakaae, kare i whakaae ki tera. No reira ka tono mai, ka korero mai ki a au, kei te tono ia ki te poari kei te he tera kaupapa. I puta atu matou i te keeti, engari pehea nga nama kei runga i te whenua. Korero atu ki a ia, kare ke i pera. I te wa i a matou i Kawhia, anei te korero a te poari ki a au: Hoori haere atu koe me te koha me to whanau, kia haere koutou, kia noho watea te whenua ra. No reira ka waea atu au ki Turanga ki taku roia, korero atu au ki a ia, me tuhi koe ki te poari, whakamarama ki te poari, te ahuatanga o te wa, motini mai te poari ki a au i Kawhia. No reira i tuhi mai kia koutou, te poari i konei, no reira ka tahuri te motini i motiningia i Kawhia. I te tahuritanga mai ki a au - Hoori anei te moni ki a koe, engari, mahau whakarite nga raruraru, nga raruraru runga i te whenua. Mohio tonu au i tera wa kare puta mai te hereni ki a au. No reira kare au i whakaae ake ki tera. Ko tahuringia nga korero o aku rangatira i Kawhia. Tahuringia i konei. No reira tuhi mai pea taku roia ki a koutou Ka hoki mai koutou ki a au i runga i te ahua o tera tuhi mai tanga kei te he au. Marama tonu te korero ki a au, ehara i te korero he .....tatou te whenua ahua rangatira. I runga i te ahua rangatira, ka whakaae au ki a Ngati Paoa, ki a ratou te whenua ra. Kaore i whakahe i ratou. Ko au tonu i te taha i te aroaro o te tribunal i Kaiaua. Whakaae au ki te iwi. Aroha au ki te iwi ra. Ka noho pera tonu te iwi ra. Maori tonu, penei i a au nei. Engari mo muri tangohia ke matou i runga paripari. He aha i pera ai? Kare au te mohio. Na te poari nei i tono tera rangatira e noho mai ra, me tenei, ki Kawhia. Tae atu matou ki reira ka tangi atu ki tera o matou ngaro atu.' Ka mutu te tangi, ka hui matou. No reira i runga ti tera ahuatanga, kei te piri tonu au ki tera whakaaro, engari, nga nama kei te haere mai, kei te haere mai.

Mr Evans then said "Mr Chairman, when the meeting was convened by the Sub-Committee of the Board to meet at Hamilton following the decision of the Tribunal. I felt at the time it was easier to release us quickly, rather than prolong the issue of settlement with Ngati Paoa.

I knew in my own mind that the Tribunals decision was absolute and no one would upset it, in terms of the government having set up a Tribunal in that body as August as it is, that the decision to settle Ngati Paoa in line with the Tribunal's recommendations were to be followed. I felt that I should take the initiative, which I did do, and requested the Board that we discuss the matter with reference to myself and my family. Then it was suggested the Sub-Committee of the Board, the members being Messrs Latimer, Mahuta and Fox. As it turned out in the interim, we had a death in the area, the late Hori Forbes and the tangi was at Kawhia. The meeting was reconvened at Kawhia. I went there with my Brother and we met the Board, and I made it clear at the outset to the Board that I wanted the matter settled in accordance with the custom of our people.

No reira, ka puta nga poroporoaki mo tera o tatou kua nehungia, te mea tuatahi. I muri atu ka tahuri nga korero mo Waiheke. Patai au ki te Poari, I asked the Board I want my deposit back plus the interest since the 1st of February.

Ka korero te Poari mai ki au, kei te whakaae ratou ki te koha tuatahi, engari kaore ratou i whakaae ki te interest. A ka noho pouri ake au ka whakaae au ki tera, te taha ki te tautoko i te motini. Kare i tana waha i korero, engari puta mai ai te korero rangatira ki a au kua whakaae ai ia ki tera. A, kua mutu te take. Hoki ki te kainga. Engari no muri atu.

Later when I went to see Dixon Wright at the Department of Maori Affairs, Hamilton, I said, "Dixon", the farm is your fella's you can take it over. I said, there's one or two accounts you'll have to clear, principally with the Bank - the Bank had a stock mortgage on the stock. He said "Oh No, No, No, that wasn't discussed. I said 'Don't twist it Dixon', the action is clear and we get our deposit back we walk out the gate, the property is yours and you've got to clear with the Bank, the securities. The Bank held the securities other than the Department of Maori Affairs. He said 'Oh No, I'll have to look into that. It was from that very minute on, , I sensed there was going to be a wedge driven into the deal, and I was proved right. That's exactly what happened, because I rang my Solicitor in Gisborne and said I want you to set out a paper clearly to the department, the agreement finalised at Kawhia. From then, Section 118 Notices started to flow to me. I think it is a tragedy in terms of what we reached at Kawhia and in terms of the amendment to the Treaty Act 1978, and the two Acts that subsequently followed, because we are Maori too, we are Maori.

He aha tenei tatou ki a tatou? He aha i pera ai?  
Kaua e haere ki reira".

I said "Kei te haere au ki reira." When the Tribunal, and the late Ned Nathan said to me, ko ia te Maori i runga i te Tribunal i tera wa, Hoori, he aha ai koe i haere mai ai ki konei? Anei taku whakahoki atu ki a ia. Kei te pirangi au te korero ki a koutou, kia noho mohio ai koutou oku nei whakaaro i roto i a au. Ka puta i au te korero i reira, kare au te whakahe i te tono a Ngati Paoa mo te whenua ra. Korero atu au ki a ia, te wa

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a mate ai taku hoa, tae atu matou ki Waiheke, kua tae ke te iwi ra i reira.. Taria atu au i a ratou. Haere mai nga pirihihana, mauria Te Pukenga, mauria i ro herehere, i tera wa. He aha i pera ai? I roto tonu i toku nei ngakau era whakaaro. Kare au i pirangi ma nga apiha a te poari tuhi mai ki au te whakahe au, takahi i toku nei rangatiratanga. No reira, ka koa taku ngakau ki te hara mai ki konei kia koutou korero ai, kia noho mohio ai etahi o koutou ko wai te tangata nei. Na tonu. Ka hara mai au ki konei na Tamati, nahau ra, i noho watea ai te taima kia hara mai ki konei. It was strictly on that belief that we went away and tried to regroup my life, my sons lives and to get started. It is not only me but my family te whanau i a John Kaa? ma, taku taina a John, matou ra o te kainga o Te Araroa, kei te titiro mai, pehea te mahi a te poari ki te poi nei, ki a tatou ra, te whanau a Hariata Whakatangi. Anei te whanau a Hariata Whakatangi. Kei konei tonu taku teina ki te korero atu ki a koutou. Matou matou. Kaore au te pirangi ke etahi ano, engari i runga i te ahua o nga waihotanga ka titiro tatou, ka ata korero, rapua he oranga mo tatou. Kia ora ra.

Sir Graham then spoke saying "Tena ano koutou katoa. Nga mea i haere mai nei kua marama ..... te tautoko i tenei wa. No reira e Hoori, haere mai. Haere mai ki raro i te ao ra, ki raro i te mana o te matuitui. Ko ahau te tangata i motini mai kia tukuna mai kia tukuna mai te tono kia koe ki te haere mai. E te Heamana, i mua o te tukuna mai te tono a Hoori ki a matou o te poari, toku nei korero ki te poari i tera wa, e he ana ratou. Kua e hokona te whenua. Whakahoki i te whenua ki te iwi. Oku nei whakaaro. I mua i taku korero i aku whakaaro ki te poari, e titiro ana ahau te raruraru i roto i te ..... engari ..... tae ki te wa i haere mai a Hoori ki tenei poari ka korero ahau i tena taima e he ana tatou ..... Ka kore ahau e mohio i tera wa i haere koe ki Tainui te rapu mai te iwi o Ngati Paoa. Engari, kore te iwi e haere \*mai i roto i te poari tera wa, engari ki toku nei whakaaro e he ana tatou.. Ko wai tatou ki te hoko i te whenua o te iwi o Ngati Paoa? Ko wai ra? ..... hakarongo mai taku matenga. No reira ka mutu, ka haere a Hoori ki .... I mua rawa atu te taenga mai a Hoori ki roto i te Waiheke, ka puta mai te tangi o te iwi o Ngati Paoa. Ka kore mai i taku ..... Ka mutu, ka haere mai tatou, ka huihui tatou ..... poari e pai ana haere koutou ki Tainui kei te whiriwhiri mai he kaupapa. Ka ..... toku nei korero kia Hoori i tera wa, e pai ana, whakahokia to putea ki a koe, haere koutou. Waiho atu te whenua mo nga tangata o reira. E whakaae ana a Hoori ki te kaupapa i tera wa, a, ka hoki mai tatou ..... mai i tenei wa ki tera wa kei konei te raruraru. Ehara i te mea na Hoori te raruraru. Kei konei nga mangai ..... titiro mai ..... ehara i te mea i haere mai tatou te hoko mai i te whenua o ..... koia nei toku nei whakaaro, koia nei te take e motini ahau, mauria mai te kaupapa ki konei Sir Graham said that he had said right from the word go that it was wrong for us to sell the land outside the descendants of Ngati Paoa. He added that even after a number of applications came to the Board and Mr Evans' name came forward, he said that it was wrong because we were tramping on the very Ancestral grounds of those people in and around

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he said he was over-ridden at that time and had said that we were interfering with the Mana of a Tribe that had lost it through the grasping hands of society.

Sir Graham continued by saying that when Mr Evans finally got his deal through and we went to Kawhia, he was the one who reported back that we have reached an agreement; return the deposit, sell the stock, and clear the debt. Sir Graham said that Mr Evans had asked for redress but had been told by Sir Graham that he could not come at that, he would get his deposit and nothing more. He reiterated that they had agreed at Kawhia to that and Sir Graham said that he has not changed his mind and added that he thinks it is wrong and if it is not cleared up, it will haunt us all the days of our lives. He said it is totally wrong to interfere with Tribal lands.

Mr Mahuta then spoke saying "E te Tiamana, kua oti ke i a Kereama te korero mo nga korero .....mo te take nei. Heoi ano he tu, he tautoko ake i ana korero. Kei te hoki nga mahara ki a tatou i hui ki Kawhia ki te korero mo te take nei, me taku whakaae, ae koia na nga whakataui i oti i waenganui i a tatou, a matou, nga tokotoru o te poari i reira. I rongo tahi nga apiha O te tari i reira, i rongo hoki a tatou whakataui i reira i runga i te ngakau marama ..... i te pai o te oti korero i reira pai ano te whakahoki mai ki .....ma ratou hei tautoko. A roto i o whakamarama ..... kua pohehe, otira ma te tari nei e whawha i reira ka he ano. Heoi ano e te Tiamana, i tu ake ki te tautoko ake i nga korero a Kereama. Koia na nga korero i oti i Kawhia. Ki a au nei kei te tu tonu. Ahakoa i whiwhi rongoa a Ngati Paoa mo ta ratou take, pewhea ra te tangata nana i whawha te whenua i mua atu i tera. He aha te painga o te whiwhi rongoa o tetahi, ko te toimahatanga o tetahi atu. Na, e toimaha tonu nei to tatou rangatira e noho nei i waenganui i a tatou i tenei ra. No reira hei whakamutunga maku mo te take nei, e ki nei a Kereama, mehemea he mana a matou ki te whakataui i te take nei, ko taua whakataui kei runga i nga apiha o te tari. Kia ora tatou.

Heoi ano, i roto i nga whakamarama e te Tiamana, kua puta ra nga whakaaro a Hoori ki waenganui i te poari, kei a tatou inaianei. Pai ke ma ratou e haere, a, ma tatou hei whiriwhiri mai.

Mr Evans and his counsel thanked the Board for hearing them and left the meeting at which point the Board continued its deliberations.

Mr Mackie spoke saying that there was an inference by Sir Graham that the Board voted against the proposal put up by Sir Graham and said that the inference is incorrect. He said that this Board actually endorsed the Kawhia arrangements and that a letter was sent to the Solicitor who responded with an alternative. He said that Mr Evans then started playing games and that it took almost 18 months before Mr Evans was settled on the property. He said that all signed the relevant document to say that Mr Evans should be settled. Mr Mackie proceeded to outline subsequent events.

Dr Reedy took the opportunity of drawing the attention of members to Page 4 of the Agenda paper which he said outlines simply the facts that are critical to the concerns. He said it referred to the meeting at Kawhia as being a crucial issue in :his whole matter. He said our record shows the result of the Kawhia meeting on 8 July 1987 and proceeded to read that decision to Board members. He said that we had heard that this morning.

Dr Reedy then referred to the entry in respect of the Board decision of 12 August 1987. He said this is the point where we are at, and then many other counter offers started to flow backwards and forwards and he thought that the subsequent event was that the Board withdrew its offer, things fell apart from that point, and the legal proceedings began to take their course.

Mr Little confirmed that that situation is outlined on Page 5 under the headings 14 October 1987, and 19 October 1987.

Mr Foster said that from perusal of the relevant documentation it appeared that there was no question of interest on deposit on the part of those who attended the Kawhia meeting.

Mr Mahuta said his recollection was that it was an agreement to refund the deposit, but said that there were also other debts incurred and that we would not be taking responsibility for them. Mr Mahuta further commented that those outside debts that had been incurred on the island running of the farm in the Boards own operations, he thought that there was some suggestion of those being reduced somewhat by looking at the sell-off of chattels and stock. Mr Mackie confirmed Mr Mahuta's understanding to be correct.

Mr Little agreed but said that basically it was going to be a walk in, walk out situation.

Mr Fox said that he agrees entirely with what Messrs Mahuta and Sir Graham had said but added that he also recalls Mr Wright not being particularly taken with our Kawhia deliberation. He said that much of the discussion was in Maori and Sir Graham and Mr Mahuta subsequently summarised it into English. He also recalled that Mr Wright and the Office Solicitor had considerable reservation. He said that in summary, the three members agreed in essence to exactly what has been said today but commented Mr Wright, advised by his Office Solicitor, had some considerable reservation.

Mr Little said that to a large extent as he understands it from what Mr Evans said this morning, that things started to go wrong when he went in and talked to Mr Wright about the department having to pick up this outside Bank debt in particular which had prior security over livestock. He said that in actual fact he would suggest that given the decision of the Board of 12 August 1987, that in fact it refused to meet outside debts, or to pay interest, that in actual fact all Mr Wright was doing was implementing the decision of the Board. He said that Mr Wright

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had no digression as such in fact to say well yes, we will pick up that other debt. He added that if in fact the Board's decision of 12 August as recorded on Page 4 is correct, and he indicated that there is no justification for believing otherwise, so whether Mr Wright and his Solicitor felt uncomfortable with the Board decision, the Board made the decision and the Solicitors were written to advising them of that decision. He said he therefore has some difficulty with Mr Evans' suggestion that in fact things started to go wrong when he (Mr Evans) went to Mr Wright and asked that we also pick up that other debt. He said that from memory that debt was up over six figures at that time. He said that had never been agreed to by the Board.

Sir Graham said that he had moved a resolution that the land should be vested in the Tainui Trust Board and that they should be there as Trustees for Ngati Paoa. He said that that was before it was sold.

Dr Reedy said that these are the facts as he recalls them and that what Sir Graham is referring to is right back before Mr Evans. He said those rights and wrongs can be debated at length but we need to now return to the facts that are before us. He said that matter has been dealt with as outlined, that the Kawhia deliberations were considered by the Board, the Board did approve the Kawhia recommendation of the refund of deposit and then we went out and they came back with a counter offer. He said that when they came back with a counter offer of more than just accepting the deposit, that is when the Board started to dig its heels in. He confirmed that the final outcome was that the Board withdrew its offer.

Dr Reedy said that everything closed from that point on, the law took its course, and as far as the Board was concerned, the Board had then to carry out its obligations and it re-entered the lease. He said that the point requiring addressing by the Board is "Is there a moral obligation on the Board"? He said that he thinks legally everything is clear, and if the Board wishes to state that it has a moral obligation then he thought that it needs to be made very clear before any further recommendations are made.

Mr Fox referred to a meeting subsequent to the Kawhia meeting where he made a strong plea which was seconded by Mr Mackie, to the effect that we were morally obliged to help Mr Evans out. He recapitulated on events at that particular meeting. He said that at the next Board meeting he tabled it again but the Board had already made the formal offer to Mr Evans.

Mr Fox said that he personally recommends that the Board look carefully at an ex-gratia payment in this instance.

Mr Mackie asked whether Mr Evans got his deposit back. Mr Little responded by saying that no, Mr Evans has not got his deposit back but he was credited ultimately when the lease was finally re-entered. He got credit for the value of stock and plant, and in terms of the department resuming the lease, the



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department also provided something like \$70,000 to the bank to clear their initial security over the stock. He said that that was when we subsequently came back to the Board seeking approval to write-off the balance - \$520,000 that theoretically Mr Evans still owed us. But Mr Little said, Mr Evans has in fact received credit for the value of the stock and plant (approximately \$200,000 from memory).

Mr Tangaroa queried the amount of the deposit, and Mr Little confirmed it to be \$325,000. Mr Tangaroa said he was concerned as to whether the korero and agreement that came out of Kawhia has been honourably settled. Dr Reedy said that in his view it had been fully considered by the Board at its meeting of 12 August 1987 and the Board agreed only with the refund of the deposit, not with the other matters.

Mr Mahuta said that the Kawhia discussions, "agreed to return Mr Evans' refund and the question of outside debts was to be addressed through the sale of stock and plant. He said if the outside debt aspect has been addressed through this means, he understands it has, because if there is a refund, then there is no other claim outside what we agreed at Kawhia. He said that unless they agreed to that then we cannot come to any agreement because that is all we agreed to at Kawhia. He said that they must drop all counter offers. Mr Mahuta expressed the view that we have to get such an understanding confirmed in writing from them.

Mr Little said that the way the paper is recorded between 8 July and 12 August, it would appear - and he would need to go and get the actual report of the Sub-Committee to confirm it - the way he reads it is that the Committee recommended that the Board accept surrender of the lease and write-off the debt relative to the purchase of the improvements, then there be a valuation of stock and chattels and refund of surplus, if in fact there was any, after repayment of the debt. He said that in actual fact that would have given Mr Evans relatively little at that time. He said that Mr Evans would have received far less than his \$325,000. He went on to say that that was picked up with the Solicitor suggesting that they might have been wrongly settled and seeking a refund of the deposit and payment of interest on it. Mr Little said that in actual fact that gave Mr Evans a lot more money because it gave him \$325,000. He said that relative to the Kawhia deal, he may have got \$10,000 - \$50,000 if there had been anything left after the sale of the livestock.

In response to a query, Mr Little said that the Kawhia deal did not give Mr Evans the offer of the refund of his deposit, and he added that the way it was reported to the Board and the way it is recorded here, is that he walk out of the lease and really his whole equity then remained in the livestock and we credit him for the value of improvements, the value of the stock and chattels, clear the debt, and if there was any money left over, then he would have received the surplus.

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At this point there were suggestions that the recorded data may be ambiguous.

Mr Mahuta said that we say that the outside debts are not our responsibility and referred to the sale of the stock and assets to reduce that outside debt. He said he did not know the details, but at least it would have been reduced and there would have been a residue on that outside debt. He said that he understood that there had been some debate as to whether in fact some of that debt applied and he said if it didn't, then that was Mr Evans' responsibility.

Sir Graham said that Mr Evans could not go on the open market, therefore we in our own right had curtailed such action because of the Tribunal decision. He said Mr Evans could have cleared his debt, had he gone on the open market.

Mr Fox said that he thought it was speculation that he would have had any offer at all, saying that by the time he was pressing the Board to be allowed to do so, the Tribunal decision had been made and had been published. Mr Fox said that technically and morally we prevented him from doing it.

Mr Tangaroa said that Mr Evans' understanding is that what came out of the Kawhia meeting has not been addressed. He said that Mr Evans did not get his \$320,000 deposit refund.

Sir John referred to the records of the meeting of 8 July as circulated to Board members and sought clarification as to the intent. Dr Reedy said that that date is that which was recorded from the meeting of 8 July 1987, and he suggested that Mr Little return to Head Office and uplift the relevant file to facilitate clarification.

Dr Reedy suggested that the alternative was to defer further consideration of the matter until the August Board meeting to enable such clarification to be provided. He indicated that there appears to be a variation in members' recollections in that some state that very clearly, it was the refund that was offered to Mr Evans at the Kawhia meeting, whilst the Board recommendation as recorded here is not that, and it is not until the entry for 12 August that the refund of the deposit is mentioned. He said that this may have been because of considerations of the surplus if any, that brought the Board to that decision that will offer the refund of deposit only. He said that as he recalls it, that is what happened subsequently.

Messrs Mahuta and Mackie both expressed the view that the Waitangi Tribunal decision had prevented Mr Evans selling.

Moved

"That the Board consider recommending to Cabinet that an 'Ex-Gratia' payment be made to the Evans Family".

Fox/Mackie

20.

In speaking to the above motion Dr Reedy said that the Board would need to explain very carefully just what the point at issue is that is being addressed here, and also provide an explanation as to why the Board is doing this. Dr Reedy continued by saying that members have mentioned the Kawhia meeting where certain undertakings were presumably given, and said that the events subsequent to that have shown that there seems to have been a commitment made and a follow-up of that promise but he said that he did not think the Board can be blamed for the subsequent events because that was fulfilled, an offer was made and rejected, and it was at that point that the course of events turned.

Dr Reedy said that he thought the legal position is clear, in that there is no come back on the Board as he understands it. But, he added, what is being addressed here, is that as Mr Evans has said, everyone seems to have been settled in this - Ngati Paoa are happy with their situation, the Government has provided return of the Block to them. He said that there is a more aspect of a grievance that the government has addressed. He added that Mr Evans is claiming that there is a moral to a grievance perhaps he should never have even been enticed into or himself come into. Dr Reedy further said that Mr Evans has said that everyone has walked away now with all debts settled etc and that he is the only loser in this business. In conclusion, Dr Reedy asked "Is there a moral aspect to this case that the Board needs to address?"

Mr Mahuta commented saying it is a matter of principle.

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Mr Fox reminded members that this is what he has already moved.

Following further lengthy debate, Mr Fox re-affirmed his earlier motion and suggested that we recommend to the Minister a one off ex-gratia payment of \$200,000.

Mr Little spoke re the proposal resolution", saying that the one thing he thought that the Crown will need to consider is all of the other costs, because while we talk about Mr Evans being the only loser to date, there has been quite a substantial cost to the Crown in this matter at this time.

He said there is the transfer of the stock and plant to Ngati Paoa, there is \$500,000 odd that we are seeking to write-off relative to Mr Evans, there is the \$250,000 cash payment to Ngati Paoa and added that there is going to be another \$200,000 if that is the figure agreed upon.

Mr Little said that he thinks the real exercise needs to be some consideration as to what the situation could have been if the Tribunal decision had not been made and you off-set that against what the actual situation is.

Mr Fox said that in view of Mr Little's comments he was happy to withdraw the amount from his motion.

Subsequent discussion revolved around the valuation of the property and Mr Foster suitably commented on such aspects.

Mr Little said that in terms of an Ex-gratia payment, the Department does not have any authority whatsoever to pay that on the Board's recommendation. He said that Board members will note in Appendix B, an Ex-gratia payment will have to go to Cabinet and on that basis the incorporated figure would need to be able to withstand scrutiny from Treasury and/or Cabinet.

The relevant date of the Waitangi Tribunal decided was also discussed at this point.

Mr Little said that the real question still comes back to the Tribunal recommendation which government did accept and confirmed that that says that "a negotiator be appointed by the Crown". He said that in actual fact, that never happened.

Dr Reedy said that as he understands it, the general view of members is that the matter should be addressed, and expressed the view that the best way to that would be for the Board to make a recommendation for an Ex-gratia payment. He said a paper will have to be prepared for Cabinet addressing all of these issues of the Waitangi Tribunals effects on this whole property.

Further discussion arose at this time on valuation aspects and Mr Little said that we have had freehold values and leasehold values done at various times. Mr Foster said that he understands that the open market valuation as a Lessee's interest was determined at that time and that all we need to know is confirmation of the appropriate date.

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Dr Reedy then referred back to the earlier motion from Mr Fox which was then put the motion was:

Moved:

"That the Board consider recommending to Cabinet that an 'Ex-gratia' payment be made to the Evans family.

Carried

Fox/Mackie

Some further discussion then took place in respect of an appropriate valuation date. Mr Little said that the Tribunal decision was released on 2 June 1987 and the Kawhia meeting was on 8 July 1987. He said that the Tribunal recommendation having been published on 2 June 1987, obviously immediately has an effect and he subsequently suggested that the Kawhia meeting date of 8 July 1987 would be entirely appropriate.

Members indicated general approval and Dr Reedy said that we would ask our officials to liaise with Valuation N.Z. on this and produce a report for the next meeting for consideration.



"B"

**7 August 1989**

**Wai 686 #S6 (b)  
Wai 369 #A12 (b)**

The Director Land  
Development Department  
Maori Affairs Private Bag  
WELLINGTON

Dear Sir

Re: Waiheke Station (G M Evans)

The above properties are held under Valuation references  
2951/220, 300, 300/1.

The Owner/Occupier is recorded as Crown/Dept Maori Affairs  
Hamilton.

Area VNZ Records 961.1163. Capital Value 1/7/85 \$875,000.

1. Purpose of Valuation

Valuation New Zealand was requested by the Board of Maori  
Affairs to determine the fair market value of the above  
property as at 8/7/87.

Valuations are required to determine the effect upon the  
open market value and the Lessee's interest in the property  
as a result of the Waitangi Tribunal recommendation that the  
land be returned to the Ngati Paoa.

The background history to this report has been well  
documented elsewhere.

It is sufficient to record that the Maori Land Board was of  
the opinion that

(a) "A restriction to the open market sale of the property  
was created by the Waitangi Tribunal decision"

and

(b) "That a statutory right for compensation would have  
occurred had the land been taken under the provisions  
of the Public Works Act".

2. Summary of Valuations

	<u>8/7/87</u>	<u>After Tribunal Recommendation</u>
Improvement	\$448,000	\$320,000
Unimproved	\$252,000	\$180,000
Capital	\$700,000	\$500,000
Lessee Interest	\$598,000 .	\$427,000

Difference \$171,000

(i) Conclusion

In the event of a claim under the Public Works Act, the normal procedure would be to entertain claims under the following headings.

Stock and Plant as at 8/7/87	
Loss of land	\$427,000
Injurious Affection	\$171,000
Plus costs associated with the claim	
Plus interest from 8/7/87 to completion	

\_\_\_\_\_  
Total  
\_\_\_\_\_

From this would be deducted all outstanding accounts plus interest to 8/7/89.

The difference would be payable to the lessee.

The property was settled from February 1984 by G Evans and family.

3. Settlement Values were -

	Improvements structural	\$220,000
Aggregate land	(Land development	
	improvements	\$316,500
Value \$600,000	(Land exclusive of	
	improvements	\$343,500
	Capital value	\$880,000

Area: 965.122ha 693 effective. 6900 Stock Units.

Paper Roads: There are a considerable number of legal but unformed roads within the boundaries which probably add another 20ha to the

farmed area. The property contained a, full  
range of buildings, and was subdivided into  
3 0



#### 4. Financial

It is obvious, with hindsight that the Evans settlement had little or no chance of success.

The initial budget included no wages of management, cartage costs were understated and the budget surplus was only \$36,000. The past history of the property showed it had only made a profit four times over 17 years.

Settlement was at 7% interest rate whereas even then the property appeared incapable of servicing a debt in excess of 4%.

The land market had been buoyed up by the prospects of non taxable capital gain plus the opportunity to write off profits acquired in other enterprises.

However, the applicant was considered to be highly experienced and as a past Director of the Wool Board and Rural Bank, would have had more experience than most to bring to the task.

##### 4.(i) Contour and Cover

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Contour Grazing	Raupo Scrub&Bush	Grass	Scrub-Rough	Under	Total	
210	Easy Tops		210		210	
480	Med/Steep		360	120	480	
230	Steep			230	230	
45	Swamp	45			45	
Total	965	45	570	120	230	965

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##### 4.(ii) Unimproved Value

Part XXIV Sec 347 Maori Affairs Act requires a determination of the unimproved value.

The probable unimproved state of the property would have been scrub and fern on the tops with Puriri, Mahoe, Taraire bush in the gullies.

It is probable that the tops would have become gorse infested as there is ample evidence of its presence currently.

##### 4.(iii) Carrying Capacity

Carrying capacity at settlement was 6900 stock units.

Although actual stock carried at July 1987 was in excess of this number it is probable that performance would have been impaired due to the absence of top dressing for the three years 1984, 1987. Carrying capacity under average efficient management was accepted at 7000 stock units.

5. Valuation of Property 8 July 1987

Valuation New Zealand were requested 4/3/87 to provide a current Market Value of the property. This was contained in a report supplied by J Gaskell District Valuer Takapuna.

By this time the rural down turn was affecting the whole of New Zealand. He assessed the fair market value of the property at \$700,000 comprising -

Structural Improvements	\$186,000	
Land Development	\$262,000	
Unimproved Value	\$252,000	\$261Av/Ha.
Capital Value	\$700,000	\$725Av/Ha.

Based upon properties with similar carrying capacity selling in Gisborne and Hawkes Bay at that time, the premium attaching to Waiheke Island was still having an effect.

Without the "Island premium" despite the lack of water frontage it is unlikely the property could have sold in excess of \$450,000 or \$60 per stock unit plus undeveloped land.

5.(i)

Timber

There is no record of any timber of commercial value remaining upon the property. This aspect has been disregarded.

6. Lessees Interest

The lessee was receiving no benefit from the rental due to the decrease in unimproved value. However he would have had, by virtue of perpetual rights of renewal, a saleable interest in the unimproved value as well as in the improvements. The increase in interest rates occurring between 1984 and 1987 would have made using the Crown's assets at 4% rental a far more desirable proposition than by having to borrow the equivalent upon the open market at 12% in order to buy an equivalent freehold property.

6. (i) **Lessee Interest Calculation**

CV. \$700,000 LV. \$252,000 Imps. \$448,000 Term 33  
years from 3/2/84. Right Renewal 11 year reviews. Rental  
\$13,750.

At 1/7/87 lease had 7.5 years to run before renewal.

Crown will receive -

1) \$13,750 pa for 7.5 years at 12% interest (factor 4.7657)	= \$65,528,375
2) 4% of \$252,000 in perpetuity at 12% interest delayed 7.5 years = \$252,000 x 4% (8.33-4.7657)	= \$35,928.1440
	<hr/>
	\$101,456.51
	<hr/>

Say \$101,500 \$252,000 - 101,500

= \$150,000 Lessee Interest in the land.

This is not unreasonable considering the low rate of interest charged by the Crown compared with mortgage rates current during 1987.

The lessees interest therefore calculated as at 8/7/87 is \$598,000. Comprising improvements \$448,000 plus interest in the unimproved value \$150,000.

7. **Open Market Restrictions**

The market restrictions facing a lessee prior to the Waitangi Tribunal decision, would have been -

1. The prior compliance of lease conditions.
2. The requirement of Pf. XXIV Sec.359 which requires the Board to offer the land in the first instance to a Maori.
3. Clause 39 of the lease gives the lessor first refusal for the purchase of the lease during the first 14 years.

These are not considered to be sufficiently restrictive so as to inhibit the sale of the property.

**Waitangi Tribunal Recommendation - Effect upon value -**

The District Valuer Takapuna Mr I Gaskell on 16/6/88 wrote to Mr Little advising that in his opinion the effect of the Tribunal decision would have been to reduce the value of the property to \$500,000 as an unencumbered freehold estate.

The effect upon the lessee is calculated as follows -

6

$$\begin{array}{r} \$598,000 \\ \hline \end{array} \times \begin{array}{r} \$500,000 \\ \hline \end{array} = \$427,142 \text{ say } \$427,000$$
$$\begin{array}{r} \$700,000 \\ \hline \end{array} \times \begin{array}{r} 1 \\ \hline \end{array}$$
$$\$598,000 - \$427,000 = \$171,000$$

It is our opinion therefore, that the lessee would have been entitled to an additional \$171,000 as a result of the Waitangi Tribunal decision.

Yours faithfully



G Foster FNZIV for  
Valuer-General

*Note: Foster was Board Member  
when we appeared before the  
Board*

