IN THE HIGH COURT OF NEW ZEALAND
NELSON REGISTRY

I TE KŌTI MATUA O AOTEAROA
WHAKATŪ ROHE

CIV-2010-442-000181
[2025] NZHC 2455

BETWEEN	RORE PAT STAFFORD Plaintiff
AND	ATTORNEY-GENERAL Defendant

Hearings:	2 April 2025 and 24 July 2025 (Further memorandum and / or submissions received 9, 15, 16 and 28 April, and 4 and 18 June, 1 August 2025) (Heard at Wellington)
Appearances:	K S Feint KC, S M Hunter KC, M S Smith and H K Irwin-Easthope for Plaintiff J R Gough, S M Kinsler, H T N Fong (via VMR), L Dittrich and L C Y Ewing (via VMR) for Attorney-General
Judgment:	27 August 2025

JUDGMENT OF EDWARDS J
[Relief]

This judgment was delivered by me on 2025 at 2.30 pm
pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Counsel/Solicitors:
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[1] This judgment addresses questions of relief following delivery of the substantive judgment in the proceeding on 30 October 2024.[1] It should be read together with the substantive judgment, and the definitions and findings of fact made in that judgment are adopted here.

[2] Relief could not be fixed in the substantive judgment because further information was required, both as to the identification of land and the calculation of equitable compensation.[2] The latter includes the current market value of the land which cannot be returned, and the value of the lost opportunity to benefit from the land. Rentals are a proxy for the lost opportunity to benefit from the land.

[3] The quantification of equitable compensation also depended on the application and calculation of simple interest. Despite the Crown conceding that simple interest was payable, I reserved judgment on this issue pending receipt of further submissions.[3]

[4] The parties have reached agreement on most of the further information required. This judgment determines the outstanding issues which have not been agreed. It also determines the application and calculation of simple interest.

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1 *Stafford v Attorney-General* [2024] NZHC 3110 [substantive judgment].
2 At [1012].
3 At [701].

[5] The exact acreage of land and the quantum of equitable compensation depends on the issues determined in this judgment. Information put before the Court in July 2025 suggests that approximately 8,000 acres of land is held on trust, and the monetary sum at issue ranges between approximately $264 million and $548 million, including interest. This is to be compared to the plaintiff's claim of between $4.4 billion and $6 billion, and an estimate made in the substantive judgment that the monetary award before interest would be "substantially less than $1 billion, but it will nevertheless be a significant sum of money".[4]

[6] The final figures will be fixed in accordance with this judgment and will be included in a third judgment which will set out declarations (the form of which have been agreed) by way of relief.

Categorisation of land

[7] The first substantive issue in dispute concerns the identification of the land impressed with a trust in relation to the Unallocated Tenths (or rural Tenths) and the replacement land for the Occupied Tenths.

[8] The trust over this land arises because the land was charged with an equitable interest in favour of the Customary Owners pending reservation of the Unallocated Tenths (rural Tenths) and the replacement of the Occupied Tenths (town and suburban Tenths).[5]

[9] The plaintiff says that the trust obligations in relation to the Unallocated Tenths and Occupied Tenths exist in accordance with the "rural", "town" and "suburban" categories that were an integral part of the Tenths scheme. This means that identification of land held within the Spain award boundary and impressed with a trust must be identified according to these categories.

[10] The Crown, on the other hand, submits that such categorisation is inappropriate. Crown counsel submits it is artificial to divide the Spain award area into smaller areas from which the outstanding town, suburban and rural Tenths should

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4 At [53].
5 At [612]–[614] and [640].

have been allocated. Instead, the Crown submits that the appropriate approach is to allocate the available Crown land to first satisfy the acres required as replacement Tenths for the occupied town and suburban sections (Occupied Tenths), and then apply it to the rural Tenths shortfall (Unallocated Tenths).

[11] Counsel for the Crown submits that this approach is appropriate as it reflects that, while the Crown's fiduciary obligations to reserve the town, suburban and rural Tenths arose simultaneously in 1845, the town and suburban Tenths had already been selected. The final selection of rural sections, and the rural Tenths, had not yet taken place, and in the case of the rural Tenths, never occurred. Accordingly, the obligation to replace the Occupied Tenths arose as an earlier priority than the reservation of the rural Tenths.

[12] Under the Crown's approach, there is no difference in the nature of the land to be held on trust or the total shortfall. It is the exact same land, being all Crown land within the Spain award boundary. However, there is an impact on the value of any shortfall. The effect of the Crown's approach is that lower value rural land may be used to satisfy the obligations in relation to the shortfall in the town and suburban Tenths. This would be instead of paying compensation for the relatively higher value of the town and suburban land, to the extent of a shortfall in that category. In that regard the issue dovetails with the valuation issue which is considered next.

[13] Counsel for the plaintiff submits that the Crown's approach should be rejected for the following reasons:

(a) This issue was not raised in the Crown's closing submissions, nor has it been raised over the course of the long-running proceeding.

(b) It would be contrary to the principles and rationale of the Tenths scheme which categorised allotments into town, suburban and rural Tenths. Not following that categorisation for the purposes of relief would be inconsistent with the substantive judgment. Remedies should restore the losses to the trust property on the basis set out in that judgment.

(c) The approach is prejudicial to the Customary Owners in that it results in a lower value of compensation than would otherwise be received as it uses the lower value rural land to satisfy the obligations in relation to the replacement Tenths.

[14] I agree with the plaintiff for the reasons explained below.

[15] While the Crown's fiduciary duty found by the Supreme Court was expressed as a duty to reserve 15,100 acres for the benefit of the Customary Owners, it is clear from that judgment that the fiduciary duty was to be understood in light of the Spain award and the Tenths scheme.[6] Provision of Tenths in accordance with the scheme was a condition of alienation. This was the basis upon which Commissioner Spain found the alienation to be equitable. The Tenths scheme involved the reservation of land in town, suburban and rural districts. The Spain award itself allocated land in certain districts. The Crown acted consistently with that categorisation, as evidenced by the allocation of town and suburban Tenths between 1842 and 1843.

[16] The evidence and submissions at trial were oriented around the different categories of land (including the valuation evidence, as discussed further below). Differentiation between these categories of land was important because the performance of the Crown's fiduciary duty differed in some respects as to whether land had been allocated, was unallocated, was Occupation Lands, or had been allocated over Occupation Lands (the Occupied Tenths).

[17] As the Crown acknowledges in their submissions, the fiduciary obligations on the Crown in relation to the Tenths land arose at the same time, whether it was town, suburban or rural Tenths. The fact that the town and suburban Tenths had already been selected did not alter the nature of that obligation. Insofar as the Occupied Tenths were concerned, the Crown had to find other land to replace those Tenths. That is, the Crown had to find suburban land to replace the suburban Occupied Tenths, and town land to replace the town Occupied Tenths.

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6 See for example *Proprietors of Wakatū v Attorney-General* [2017] NZSC 17, [2017] 1 NZLR 423 [Supreme Court judgment] at [6], [32], [408], [411] per Elias CJ, [572]–[574], [587], [588]–[589], [685], [718] per Glazebrook J, [738], [748], [779] and [781]–[782] per Arnold and O'Regan JJ.

[18] While I accept that there is some overlap between the suburban and rural Tenths land, there is no evidence that the intention was for rural land to be used to satisfy the town and suburban Tenths obligations. To do so would run contrary to the scheme.

[19] The remedies in this case must respond to the breach, and track as closely as possible to the performance of the fiduciary duty which was envisaged at the relevant time. It follows that I consider the Crown's approach runs counter to the performance of the fiduciary duty found by the Supreme Court, and the findings in the substantive judgment. I consider the land held on trust for both the Unallocated Tenths and the Occupied Tenths must be land falling within the town, suburban and rural categories. I find accordingly.

Valuation of replacement Tenths

[20] In addressing the valuation of the replacement Tenths for breach of the fiduciary duty in relation to the Occupied Tenths, I said the following:

> [994] The valuation exercise for the Occupied Tenths involves valuing the shortfall in replacement land held on institutional constructive trust. Strictly speaking this land is unascertained and is to be treated in the same way as the Unallocated Tenths.
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> [995] However, the actual allocation of the Tenth provides a point of reference to determine value and I accept that it may be the best (albeit imperfect) evidence available from which to determine the value of this land. As already noted, the values of the town Tenths and suburban Tenths were agreed between the valuers, and those agreed values are adopted here.

[21] The Crown raises issues with the valuation exercise of the replacement Tenths to the extent it is tied to the actual Tenths allocated on occupied land. The Crown says there is a high variation in value between the Occupied Tenths, which raises the prospect that using the actual allocated Tenths as a point of reference will result in distorted and overly high valuations. Moreover, the Crown raises a further problem in that the land from which the replacement Tenths would have been reserved would necessarily exclude the Occupation Lands, and would be from the surrounding lands or other areas.

[22] The Crown acknowledges that further evidence would be required to address this issue, and respectfully invites this Court to consider whether the values of the Occupied Tenths sections remain the best evidence available from which to determine the value of replacement Tenths.

[23] The plaintiff says there is no doubt about the Court's findings on these issues. The Court has made its decision and the Crown's attempt to re-open it should be rejected.

[24] I agree with the plaintiff. The decision regarding how the replacement Tenths were to be valued was made on the best evidence available at trial. Both parties had every opportunity to call evidence directed towards this issue but chose not to do so. While basing the valuation of replacement Tenths on the actual Tenths occupied was an "imperfect" proxy for the replacement Tenths, it was nevertheless the best (and only) evidence available.[7] The evidence regarding the suburban and town Tenths had been essentially agreed between the valuers, and those values were adopted for the replacement Tenths.

[25] My determination of the valuation of the replacement Tenths is final. There is no basis to revisit it. The Crown's application in relation to this issue is dismissed.

Further deductions for land returned pursuant to Treaty settlements

[26] The Crown submits that further deductions of land should be made for land returned to the Customary Owners pursuant to Treaty settlements.

[27] This submission is made in reliance on [1010] of the substantive judgment in which I said that the land returned to the Customary Owners (or entities on their behalf) needed to be taken into account in determining the acreage of Tenths and Occupied Lands held on trust by the Crown.

[28] The Crown says that properties within the Spain award boundary which have been transferred to the Tainui-Taranaki post-settlement governance entities as cultural

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7 Substantive judgment, above n 1, at [995].

redress represent land already returned to the Customary Owners, or entities representing the Customary Owners, and should be factored into the final acreage of land held on trust. The Crown makes the same argument in relation to cultural redress land returned as part of the Kurahaupō Treaty settlement.

[29] In response, the plaintiff says that this issue has been finally determined in the substantive judgment, and it is not open to the Crown to revisit the impact of Treaty settlements on the relief granted to the Customary Owners.

[30] Part X of the substantive judgment addressed the impact of Treaty settlements on issues relating to relief. The issue of "double recovery" (which had been identified in the Supreme Court judgment)[8] was specifically addressed in this part.[9]

[31] I found there was a factual overlap between the Treaty settlements and the plaintiff's claim.[10] However, I observed that ascertaining the extent of any double recovery was not an easy task.[11] While the Crown had called evidence on the Treaty settlements reached, and the Treaty settlement process more generally, it did not call evidence, nor make submissions, suggesting the quantum of any double recovery.[12]

[32] The plaintiff had proposed a deduction of $5.98 million for any double recovery, but, in the alternative, said the maximum to be deducted was $48 million. That latter sum was calculated by reference to an indicative assumption that 50 per cent of the redress value in the Treaty settlement package related to the Tenths shortfall and Occupation Lands.[13]

[33] After noting some limitations with these figures (including the fact that the value of the Kurahaupō settlement did not appear to have been reflected in the sums), I concluded:

> [899] However, in the absence of evidence and submissions regarding the value which should be assigned to these factors, I am not prepared to go

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8 Supreme Court judgment, above n 6, at [716]–[717] per Glazebrook J and [826] per Arnold and O'Regan JJ.
9 Substantive judgment, above n 1, at [895]–[899].
10 At [895].
11 At [896].
12 At [897].
13 At [897].

> beyond the plaintiff's assessments. What these factors do suggest, however, is that the higher of the two sums put forward by the plaintiff should be adopted. Accordingly, I find that the sum of $48 million should be deducted from the monetary award made against the Crown in this case.

[34] The $48 million deducted must be seen in the context of the Crown's evidence which assessed the value of the Tainui-Taranaki iwi settlement at $99.29 million. This included $15.39 million in other financial redress and cultural redress gifting.[14] The deduction therefore represented approximately half of the value of the Tainui-Taranaki Treaty settlement, including cultural redress. The fact that the Customary Owners had received some form of compensation for cultural loss was a factor in declining the claim for cultural loss damages.[15]

[35] I agree with the plaintiff that the issue of the impact of Treaty settlements on relief was finally determined in the substantive judgment. The direction in [1010] must be seen in that context. It was not a general invitation to re-open and re-litigate matters which were ventilated at trial. The Crown had every opportunity to call evidence directed towards this issue and was on notice of the risk of double recovery — that risk having been signalled in the Supreme Court decision delivered in 2017.[16] The Crown also had the opportunity to raise the Kurahaupō settlement redress as an issue at trial, but it did not do so.

[36] The Crown chose not to call evidence or make submissions directed towards the quantum of double recovery. It did not address how land returned through Treaty settlements should be accounted for, nor the deductions to be made for the Kurahaupō redress. It would be contrary to natural justice and the principle of finality to allow the Crown to do so now.

[37] For these reasons, I decline the Crown's application for further deductions to be made for land returned to the Customary Owners under Treaty settlements.

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14 At [884].
15 At [774].
16 Supreme Court judgment, above n 6, at [721] per Glazebrook J and [826] per Arnold and O'Regan JJ.

Deduction of land taxes

[38] The parties are largely agreed on the sum payable in respect of the sum required to compensate for the lost opportunity to benefit from the land, for which rentals are a general proxy. The only issue in dispute concerns the Crown's submission that deductions for land taxes should be made.

[39] To put this issue into context, it is necessary to understand how the respective cases on rentals were presented. The plaintiff sought equitable compensation for the lost opportunity to benefit from the land.[17] The plaintiff's expert, Dr Meade, quantified this loss by using a measure which focused on compensating the beneficiaries. This measure included a calculation of hypothetical rentals generated by the land.

[40] The methodology used by Dr Meade was captured in a diagram which was reproduced at [652] of the substantive judgment. The calculation involved assessing the gross rentals, and then deducting land taxes and administrative costs at the trust level to reach a net rental figure. Dr Meade then went on to assess the losses at the beneficiary level.

[41] The parties' experts agreed that a rentals calculation was the correct way to value the lost opportunity to benefit from the land. The Crown did not adduce evidence directed towards valuation of this lost opportunity. Nor did it contest the methodology used by Dr Meade. Rather, the Crown experts challenged certain inputs into Dr Meade's net rentals calculation, namely the 1845 land values, and the vacancy and rental rates.[18]

[42] The contest at trial was on whether the correct measure of loss was to compensate the beneficiaries (as the plaintiff contended) or to restore the trust (as the Crown contended). In closing submissions, counsel for the Crown submitted that if its position was accepted, then the "analysis can stop here" and the plaintiff would be entitled to recover the current value of the lost trust assets, plus any rental income that

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17 Substantive judgment, above n 1, at [649].
18 At [949]–[962].

would have been earned from those assets (with simple interest). The Crown did *not* make a submission that land taxes should be deducted from those rentals.

[43] After addressing the correct measure of loss, and whether simple or compound interest should be applied, I then addressed the relevant counterfactual for assessing loss. In my substantive judgment, I said:

> [703] For the sake of clarity, I confirm that a counterfactual based on how rentals from the land would have been administered by the trust (including the deduction of administration fees and tax and applicable savings rates) goes further than required to assess compensation in this case. The focus is on the value of the trust asset, rather than the operation of a hypothetical trust.

[44] The plaintiff says that [703] conclusively determines the issue of land taxes, and the Crown cannot reopen the case. Moreover, counsel for the plaintiff submits that the Crown should not be permitted "to pull only at one thread of the Court's assessment". Counsel for the plaintiff says that land taxes cannot be removed in isolation without recognising that the Court's disallowance of such deductions was only one part of its broader decision on compensation.

[45] In response, the Crown says that this issue was not before the Court and has not been finally determined. Counsel for the Crown submits that the dispute at trial concerned the correct measure of loss and [703] must be understood in that context. The parties did not address whether land taxes should be deducted from gross rentals, and so it remains open to this Court to do so.

[46] Furthermore, the Crown submits that a distinction may be drawn between land tax and the other administrative costs deducted by Dr Meade. As a landowner was required by statute to pay land tax, the trust's rental balance would always have comprised the net rental after payment of land tax. The Crown says that a calculation of rentals that does not account for the land tax payable on that land in the same year as the rent was accrued, would result in the Crown paying more than the trust would have ever received.

[47] I agree with the Crown that the determination at [703] was in the context of a dispute about the correct measure of loss. The current issue in relation to the land taxes was not raised by either party and it was not before the Court at trial.

[48] However, that does not mean that the Crown can raise the issue now. A key issue at trial was how to value the lost opportunity to benefit from the land. The plaintiff called expert evidence directed to that point. The Crown did not put forward evidence setting out a competing methodology for valuing that lost opportunity. Nor did it signal that valuation on a restoration of the trust measure would require deduction of land taxes from the gross rentals. Indeed, the Crown's submissions in closing were that if I found for the Crown on the measure of loss then the analysis could stop there. That is exactly what happened — as reflected in [703].

[49] It is far too late for the Crown to now suggest that the proper valuation of the lost opportunity to benefit from the land involves the deduction of land taxes from the gross rentals. The time to do that was at trial. Each party was obliged to bring its best case to the hearing in 2023. The principle of finality weighs against reopening this issue now.

[50] For these reasons, the Crown's claim for deduction of land taxes from the gross rentals is declined.

Simple interest

[51] In the substantive judgment, I reserved my decision on the application and calculation of simple interest pending receipt of further submissions.[19]

[52] The issues to be determined in relation to simple interest are:

(a) whether simple interest should be awarded;

(b) the interest period for which simple interest should be awarded; and

(c) the interest rate which should apply.

[53] The question of simple interest arises in relation to the rental calculation. As discussed in the previous section, the rental calculation represents the value of the lost

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19 At [701] and [1017].

opportunity to benefit from the land (or the benefit-generating aspect of the land). Rentals are a proxy for this value. Actual rentals were not generated, nor received, by the Crown. That distinction is important when considering the role and function of interest in this case.

[54] The contest at trial focused on whether compound interest or simple interest should be awarded. The plaintiff claimed compound interest. The Crown opposed the award of compound interest but conceded that simple interest should be awarded.[20] After reviewing relevant legal principles, I concluded:[21]

> [696] Turning to this case, I am not persuaded that compound interest is required to restore to the trust that which was lost as a result of the Crown's breach. This case is *not* about the Crown's duty as trustee to manage trust assets in the best interests of the beneficiaries. Nor is it about the Crown's duty to accumulate trust income, or to engage in a proper investment strategy. This is *not* a case where the Crown has had the use of rental proceeds or even where it is presumed to have had use of those rental proceeds. This is *not* a case about the misapplication of trust funds.
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> [697] This case is about land, and the opportunity to benefit from that land. The Tenths are the trust assets which are the subject of this claim. Other forms of trust assets, such as the income that may have been earned on the rental income, are not part of this claim. A claim for compound interest is too remote from the loss caused by the Crown's breach. To include compound interest in a counterfactual to assess loss risks expanding the claim well beyond the four corners of this proceeding and goes further than what is required to restore the loss.

[55] While the Crown had conceded simple interest should be awarded, I had not been directed to evidence nor submissions on rates nor periods, and so reserved my decision on both the application and calculation of simple interest.[22] These issues are considered below.

Should simple interest be awarded?

[56] The first issue concerns the application of simple interest. The question is whether simple interest should be awarded at all.

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20 See substantive judgment, above n 1, at [701].
21 Emphasis original.
22 At [701].

[57] The application of simple interest is to be determined in accordance with equitable principles. Those principles were addressed in the Crown's submissions and are outlined where relevant below.

[58] The Crown says that an award of simple interest is an issue to be determined by this Court, and I am not bound by its concession. In any event, the Crown says that this concession was based on the plaintiff's claim at trial which was premised on monetary loss having been suffered. The Crown says that this was not the basis upon which compensation was ordered, with the rentals being described as a proxy for the benefit-generating value of the land.[23] Moreover, the Crown says that an award of simple interest would be difficult to reconcile with my reasoning on s 21(1)(b) of the Limitation Act 1950.

[59] The plaintiff says that simple interest should be awarded as it is a measure of the time value (or use value) of money (TVOM). Counsel for the plaintiff submits that this core financial principle addresses three concerns: inflation, opportunity cost, and risk. Counsel says:

> In other words, by not adjusting a past $1 rental into a present day $1, the real value of the past $1 rental is less than the present day $1 because of the effect of inflation alone. If the TVOM opportunity cost and risk concerns are also factored in, the real value of that past $1 is less still.

[60] Accordingly, counsel for the plaintiff submits that because rentals have been calculated by Dr Meade at points in time without any adjustment to reflect TVOM, the absence of simple interest means that the principal sum is significantly less today than if it had been obtained in years past. That would lead, in counsel's submission, to the Customary Owners being undercompensated for their loss.

[61] Turning first to the question of the Crown's concession, I am not entirely persuaded by the Crown's attempt to limit the scope of that concession. It was always clear that the rental calculation was the method by which compensation for the lost opportunity to benefit from the land was to be quantified. The Crown's experts agreed that this was the appropriate methodology to quantify this loss. The Crown did not

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23 At [700].

suggest that there was a different way of quantifying this loss which did not involve the application of simple interest.

[62] However, that does not mean this Court should be bound by that concession. It must be remembered that the Crown's current position is advanced in response to the reservation of both the application and calculation of interest in the substantive judgment. I consider the question of whether simple interest applies should be determined according to legal principle and the evidence, rather than in reliance on the Crown's concession. The significant sums of money at stake underscore the need for that approach.

[63] The equitable principles relevant to the calculation of interest were recently summarised by the High Court of England and Wales in *Mitchell v Al Jaber*.[24] The Court in that case referred to the compensatory and restitutionary bases upon which an award of interest may be made:

(a) Awards of interest on a compensatory basis are designed to reflect the value of lost investment returns or increased expenditure on commercial borrowing as a result of the deprivation of the relevant assets.[25]

(b) Awards of interest on a restitutionary basis are designed to ensure full disgorgement of the personal profits made by disloyal trustees who appropriate trust funds for themselves. They provide a substitute for an account of profits.[26]

[64] The Crown says that neither the compensatory nor restitutionary basis of recovery is open to the plaintiff given the findings in the substantive judgment. Three grounds are advanced in support of that proposition.

(a) First, both the compensatory and restitutionary bases are predicated on a loss or gain of actual money. However, compensation was not

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24 *Mitchell v Al Jaber* [2023] EWHC 1239 (Ch) at [21]–[28].
25 At [27].
26 At [27].

awarded for the loss of rental proceeds as an income stream in this case, but for loss of beneficial use of the property.

(b) Second, relying on [696] of the substantive judgment (set out at [54] above), the Crown emphasises that equitable compensation is not compensating for lost investment returns or the lost opportunity to benefit from rental income streams. In the Crown's submission, this confirms that interest cannot be awarded on a compensatory basis.

(c) Third, this Court has already rejected a restitutionary basis for the recovery of interest by stating that this is not a case where the Crown had the use of rental proceeds or even where it is presumed to have had use of those rental proceeds.

[65] Starting with the third point, I agree with the Crown that the plaintiff has not presented his claim for equitable compensation on the basis that the Crown had the use of rental proceeds or is presumed to have had the use of rental proceeds.[27] The basis for the claim presented at trial was compensatory in nature.

[66] As to the first and second points, it is true that the equitable compensation in this case is not compensating for the loss of money. Nor is it compensating for lost investment returns. Rather, the award of equitable compensation is for the lost opportunity to benefit from the land. The calculation of rentals is a means of valuing that loss.

[67] However, that does not mean that the award of interest cannot be conceptualised as compensatory in this context. As a matter of broad principle, the award of simple interest on the rentals assists in expressing the valuation of what was lost in current day terms. It is both compensatory and substitutive in that sense as it forms part of the value of the trust asset that cannot be restored.

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[27] The relief sought in the plaintiff's statement of claim included an order for an account of profits. However, that was not pursued at trial, and the claim for equitable compensation was not sought on the basis that it was a proxy for an account of profits.

[68] Contrary to the Crown's submission, I do not consider the application of simple interest is irreconcilable with the reasoning in the substantive judgment relating to the limitation point. I found that the exception in s 21(1)(b) applied to the claim for equitable compensation because the Crown had converted to its own use the potential of that land to generate benefits for the Customary Owners.[28] It was for that reason that I found the rentals calculation was excepted from the limitation bar. The application of simple interest forms part of the valuation exercise by which the potential of the land converted by the Crown for its own use may be quantified. Nothing in the limitation point reasoning detracts from the general principle that the application of simple interest is compensatory in nature.

[69] For completeness, I note that the Crown made further submissions in relation to this point which referred to the fact that the Crown did not continuously own all the relevant land, as almost all of it had been transferred out of Crown ownership at different points in time across the 180-year period. These arguments appear to challenge the reasoning around the limitation issue, and to that extent they are best left for appeal. I have not engaged with those arguments on that basis.

[70] In summary, while this case does not involve the loss of money, I consider that, as a matter of general principle, the application of simple interest is compensatory in nature. Accordingly, subject to questions of period and rate, I consider the Court has a discretion to award simple interest in this case.

What interest period should apply?

[71] The Crown submits that interest, if awarded, should only run from the date the proceedings were filed on 26 May 2010. Counsel submits that, prior to that date, the Crown could not have known, and could not have expected to know, that the plaintiff was likely to bring private law proceedings in relation to the Tenths, including a private law claim for rental proceeds for the past 170 years (as it was at the time the claim was filed).

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[28] Substantive judgment, above n 1, at [43]–[44], [820]–[825] and [851].

[72] In response, the plaintiff says that the orthodox rule, that interest applies from the date of accrual of a cause of action, should apply. This means that interest should be calculated from 1845. The continuing nature of the breach, and the plaintiff's repeated requests to the Crown to remedy it, are also reasons why an award of interest over the entire period is appropriate in the plaintiff's submission.

[73] As noted by the plaintiff, the general rule is that interest is payable as from the date of the accrual of the cause of action.[29] However, the power to award interest is discretionary, and there is no rule that interest will invariably run from the date of loss.[30] In *Equiticorp Industries Group (in stat man) v The Crown (no 3) (Judgment no 51)*, Smellie J identified three exceptions to the general approach:[31]

> … (1) when the position of the defendant demands it, (2) when the conduct of the plaintiff does so, and (3) when it would be unjust in all the circumstances to award interest from the date of loss.

[74] The Crown relies on the first of the three exceptions. In *BP Exploration Co (Libya) Ltd v Hunt (No 2)*, Robert Goff J (as his Lordship was then known) explained that there may be circumstances where it would not be just to make the defendant pay interest from the date of loss. For example, the circumstances may be such that the defendant neither knew, nor reasonably could have been expected to know, that the plaintiff was likely to make a claim, and so was in no position either to tender payment, or even to make provision for payment if the money should be found to be due. In those cases, the Court may, in its own discretion, grant interest from the date of the plaintiff's claim, or from such a date as will allow reasonable investigation of the claim.[32]

[75] In *Quorum A/S v Schramm (No 2)*, Thomas J stated that the courts have exercised their discretion to defer the start date of the interest period where a plaintiff has put forward a claim on a basis substantially different to that which proved

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29 See *Equiticorp Industries Group Ltd (in stat man) v The Crown (no 3) (Judgment no 51)* [1996] 3 NZLR 690 (HC) at 692.

30 *BP Exploration Co (Libya) Ltd v Hunt (No 2)* [1982] 1 All ER 925 (QB) at 975.

31 *Equiticorp Industries Group Ltd (in stat man) v The Crown (no 3) (Judgment no 51)*, above n 29, at 693 citing *BP Exploration Co (Libya) Ltd v Hunt (No 2)*, above n 30, at 975.

32 *BP Exploration Co (Libya) Ltd v Hunt (No 2)*, above n 30, at 975.

successful at trial; where the defendant needed time to make up their mind; and in unusual cases or those that are not straightforward.[33] His Lordship explained:

> [7] However, although the date of the loss is when the sum became due under the policy, it does not follow that the court awards interest in every case from the date of the loss. For example in *Rhesa Shipping Co SA v Edmunds, The Popi M* [1984] 2 Lloyd's Rep 555 the assured put forward a claim on a basis substantially different to that which proved successful at trial. The trial judge (Bingham J) awarded interest from a period about four years and four months after the loss. The Court of Appeal awarded interest commencing two years after the date of the loss; Sir John Donaldson MR (with whom O'Connor LJ agreed) considered that the case was unusual and underwriters therefore needed time to make up their minds. May LJ, though not differing from the other judges in the result, expressed the view that although in most cases insurers would need to investigate claims prima facie interest ought to be awarded from the date of the loss. Another example is *McLean Enterprises Ltd v Ecclesiastical Insurance Office plc* [1986] 2 Lloyd's Rep 416, where interest was awarded by the trial judge (Staughton J) from a date some five weeks after the loss. In the *Kuwait Airways* case (to which I have referred) the loss occurred shortly after the invasion of Kuwait by Iraq on 2 August 1990, but interest was only awarded from 5 December 1990; the judge found that it was not clear that until 12 November 1990 that a claim in respect of loss of spares was being pursued and insurers needed a little time to appreciate that fact and consider the claim.
>
> [8] The decisions to which I have referred are but examples common in the experience of the Commercial Court in relation to insurance claims in unusual cases or those that are not straightforward. In such cases, the court usually exercises its discretion on the basis it is proper to allow insurers some time to consider the claim. The time varies accordingly to the nature of the loss, the way the claim is presented and the circumstances that require investigation. In many cases the time may be quite short. The court will always have regard to the particular circumstances specific to that claim.

[76] In *Equiticorp*, Smellie J adopted this line of reasoning, considering that the case was of "enormous complexity both factually and legally" and that "it was not until the true nature and thrust of the plaintiffs' claims emerged on the pleadings that the Crown was able to fully comprehend its position and deliver a considered response".[34] The Judge also referred to a stay of proceedings, which was "not the plaintiffs' fault, nor was it the Crown's",[35] and the death of the presiding Judge, as also

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33 *Quorum A/S v Schramm (No 2)* [2002] 2 All ER (Comm) 179 (QB).

34 *Equiticorp Industries Group Ltd (in stat man) v The Crown (no 3) (Judgment no 51)*, above n 29, at 693.

35 At 693.

being exceptional.[36] In those circumstances, the Judge considered that a reduction in the time over which interest would otherwise run was justified.[37]

[77] The application of those principles to this case requires an assessment of the complexity of the case, and the ability of the Crown to mitigate its loss. That assessment must be consistent with my findings in rejecting the Crown's defence of laches.[38] However, while there is factual overlap, I consider the laches assessment differs to that which must be made when deciding on the period for which interest should run. The focus of the enquiry is on the position of the Crown and its ability to comprehend the claim in order to take steps to tender payment or mitigate its exposure.

[78] The analysis starts with the observation made in the substantive judgment that this is a highly complex case involving difficult issues of fact and law.[39] That is reflected in the novelty of the duty found by the Supreme Court, the historic nature of the claim, and the sheer scope of the claim in relation to the land and sums of money sought as compensation. The evident confusion about the purpose of the Tenths and the Crown's role in relation to those Tenths was not sufficient to constitute a defence to the equitable claim, but it is nevertheless relevant to the period for which simple interest should run.

[79] It is true that the Crown was aware that the Tenths were to be held on trust for the Customary Owners and were to be used to generate benefits for them. The Crown was also aware of the Customary Owners' claims in relation to the Tenths. As I found in relation to the laches defence, the Customary Owners made persistent efforts to vindicate their rights over time, and the Crown was aware of the problems with respect to the Tenths but did not take steps to remedy the position.[40]

[80] But that does not mean that the Crown could have reasonably comprehended that a novel private law claim where equitable compensation for the loss of the use of the land would be sought.

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36 At 694.
37 At 694.
38 See substantive judgment, above n 1, at [940]–[944].
39 At [1022].
40 At [932] and [934].

[81] Indeed, the legal factors which helped explain why the plaintiff did not bring this claim earlier, also explain why the Crown could not have anticipated a claim for equitable compensation.[41] The Crown could have reasonably assumed that the judgment in *Regina v Fitzherbert* protected it from any equitable claim for breach of trust or fiduciary duty.[42] In that case the Court of Appeal found that the Crown did not hold land situated in Wellington on trust for the Māori vendors. The Supreme Court subsequently found that this judgment had been wrongly decided.[43] Up until that point, however, it would have been reasonable for the Crown to rely on that judgment as effectively foreclosing this proceeding. In the face of that judgment, there was no legal (as opposed to political) incentive to take steps to compromise a claim for equitable compensation.

[82] Moreover, while the Customary Owners did not give up pursuing the return of the Tenths, they did so through avenues of relief entirely different to the current proceeding. These included the filing of a Waitangi Tribunal claim in 1986, which ultimately led to representatives of the Customary Owners being engaged in a settlement process with the Crown. As observed in the substantive judgment, the Waitangi Tribunal process is entirely different to a private law claim.[44] While embarking on that process did not prevent this proceeding being filed, this was, as I said, a different "tactical approach".[45] On the basis of the evidence given by Crown witnesses at trial, I accept that the current proceeding, like that in *BP Exploration*, came as a "genuine surprise".[46]

[83] Against these factors is the risk of under-compensation for the Customary Owners if simple interest is not applied over the entire 180-year period. In assessing that risk it must be remembered that we are only talking about the application of interest on the rentals, and not the rentals themselves. It must also be remembered that the rentals calculation does not represent actual money generated, lost, or retained by the Crown. Rather it is the measure of the benefit-generating value of the trust

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41 At [931]–[939].
42 At [934] citing *Regina v Fitzherbert* (1872) 2 NZCAR 143.
43 Supreme Court judgment, above n 6, at [294] per Elias CJ.
44 Substantive judgment, above n 1, at [891].
45 At [923].
46 *Kuwait Airways Corp v Kuwait Insurance Co SAK (No 2)* [2000] 1 All ER (Comm) 972 (QB) at 983 citing *BP Exploration Co (Libya) Ltd v Hunt (No 2)*, above n 30, at 976–977.

asset. The rentals calculation is an imperfect but nevertheless the best (and only) proxy to value this aspect of the trust asset. Seen through that lens, it is not as simple as saying that a failure to account for the time value of money by applying simple interest for the entire 180 years will automatically lead to under-compensation.

[84] Balancing these factors in their entirety, I consider the exceptional features of this case warrant deferring the application of simple interest until the date this proceeding was filed. That is the most equitable result in all the circumstances. I order accordingly.

What is the appropriate interest rate?

[85] The final issue to be resolved in relation to simple interest concerns the applicable interest rate.

[86] The plaintiff says the rates used by Dr Meade to calculate rentals should apply. These rates were included in Dr Meade's evidence and were not challenged at trial. Indeed, the Crown experts characterised them as "very, very conservative".[47]

[87] In the alternative, the plaintiff says that the statutory rates of interest should apply. The statute or statutes relied on by the plaintiff were not specified in submissions. I have proceeded on the basis that the relevant statutory rates of interest are those prescribed by the Judicature Act 1908 (which was in force at the time proceedings were commenced), its predecessors, and relevant Orders in Council.

[88] The Crown contends that neither of these alternatives are appropriate. Counsel submits that the interest rates based on the government bond rate (the New Zealand Government Stock (NZGS) rate) is the most apt in these circumstances. These rates were referred to in the evidence of Dr Meade at trial.

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[47] However, whether something is conservative depends on the comparator. The evidence of the Crown experts was given on the assumption that the correct measure was compensation of the beneficiaries. I found against the plaintiff on this point, finding that the correct measure was restoration of the trust.

[89] The Crown referred me to recent cases of the English High Court and Court of Appeal of England and Wales for an exposition of legal principles relevant to the choice of interest rate in equity.[48] Those cases establish that where a defaulting trustee is liable to make good a capital loss to the fund, "the rate of interest to be awarded can therefore be one that acts as a proxy for the investment return that trust funds with the general characteristics of the fund in question could expect to make".[49] The rate which reflects what the individual claimant itself would have done is not relevant.[50] A broad-brush approach is required.[51]

[90] The English Court of Appeal upheld the principles applied by the lower Court in *Glenn v Watson*. In doing so, McCombe LJ observed that whether the award was in accordance with equitable principles is just as important as precedent, possibly more so.[52] The High Court's reasoning was found to be in accordance with those principles which the "courts of equity have acted for almost 200 years".[53]

[91] The choice of an appropriate interest rate was at issue in *Equiticorp* also.[54] Smellie J observed that the statutory rate provided for in s 87 of the Judicature Act did not apply.[55] The Judge considered that his task was to take cognisance of the rates being charged during the relevant period and to arrive at a "fair and conservative assessment".[56] The Judge recognised that there was merit in both the commercial rates and government bond rates put forward in that case, and adopted an annual rate which was an average of the two rates.[57] Total simple interest of approximately $134 million was awarded in that case.[58]

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48 *Glenn v Watson* [2018] EWHC 2483 (Ch); *Watson v Kea Investments Ltd* [2019] EWCA Civ 1759, [2019] 4 WLR 145; and *Mitchell v Al Jaber*, above n 24.

49 *Glenn v Watson*, above n 48, at [49] upheld on appeal in *Watson v Kea Investments Ltd*, above n 48, at [21].

50 At [3].

51 *Mitchell v Al Jaber*, above n 24, at [43]; *Glenn v Watson*, above n 48, at [54].

52 *Watson v Kea Investments Ltd*, above n 48, at [47].

53 At [21].

54 *Equiticorp Industries Group Ltd (in stat man) v The Crown (no 3) (Judgment no 51)*, above n 29.

55 At 701–702.

56 At 702.

57 At 691 and 702.

58 At 703.

[92] Applying those principles to this case, the starting point is to identify the general characteristics of the relevant "trust fund".[59] The "trust fund" in this case is like no other. It is a unique and bespoke trust fund. The Crown had a fiduciary obligation to reserve land and hold it in trust for the benefit of the Customary Owners. The land could be used to generate an income through leasing, but it could also be used to build institutions such as schools for the exclusive use of the Customary Owners.[60] It is these characteristics which must guide the choice of an appropriate interest rate. They provide the measure by which to assess the three rates before the Court, to which I turn next.

(a) Dr Meade's rates of interest

[93] I start with the plaintiff's preferred rates of interest which are those set out in Dr Meade's evidence. These rates comprise four different rates: mortgage rates; common fund/benefit interest rates; a "smoothed and mean-corrected" NZGS; and a rate based on the Wakatū Inc's business activities.

[94] These rates of interest do not align with the legal principles outlined above. The rates chosen include borrowing rates, but there is no reason to suggest that the Crown as trustee would have borrowed in this case. Such a rate does not reflect the characteristics of the trust fund.[61]

[95] The other rates chosen by Dr Meade focus on subjective factors such as Wakatū's business activities (which is a return on equity rate), and a "smoothed and mean corrected" NZGS rate for 1940 to 1977. These subjective elements are at odds with the approach of the English courts too. Those cases confirm that rates based on what an individual claimant would have done does not inform the appropriate rate.[62]

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59 The cases sometimes refer to the characteristics of the "claimant". In light of my findings that the correct measure for equitable compensation is restoration to the trust (as opposed to compensating the beneficiaries of the trust), the claimant in this case is not the Customary Owners, but the Tenths trust.

60 Substantive judgment, above n 1, at [303] and [305].

61 See observations in *Glenn v Watson*, above n 48, at [46]. In that case, Nugee J said "Unlike the case of a trading business or commercial claimants … it seems entirely unrealistic to assume that a conventional trust fund would borrow at all. It is not the practice of such settlements to borrow to fund their investment activities, and there is therefore no logic in a presumption that they would have borrowed less."

62 At [3].

[96] Finally, Dr Meade's rates were also fixed on the basis that the correct measure of loss was compensation of the beneficiaries. However, I found that this was not the correct approach, and the proper measure of loss was restoration of the trust.[63] This suggests that Dr Meade's rates reflect the characteristics of the beneficiaries, rather than the general characteristics of the trust fund.

[97] The combination of these factors means I am not persuaded that Dr Meade's rates reflect the general characteristics of the trust fund in issue, and they are not in line with the equitable principles which guide selection of the appropriate rate.

(b) Statutory rates of interest

[98] I turn next to the statutory rates of interest. As already noted, the particular statutes relied on by the plaintiff were not specified in submissions. Nor were there any submissions made on the grounds which might support the adoption of this rate, whether by reference to the case law or at all.

[99] The underlying rationale behind a statutory rate of interest is to compensate for delay in payment of a debt or damages.[64] Application of an interest rate on that basis is consistent with compensating the plaintiff for the time value of money, as outlined earlier in this judgment. Moreover, I accept that, on one view, it may be argued that there is not much daylight between an award of equitable compensation and an award of damages in this case. That is particularly so in New Zealand where the courts have moved away from drawing distinctions based on the cause of action.[65]

[100] Nevertheless, in *Equiticorp,* Smellie J said that the Judicature Act did not apply as that statute only applied to the recovery of debt or damages.[66] The cause of action in that case was "restitution-based" and involved "restoration by the Crown, as a constructive trustee, of moneys and interest in respect of those moneys".[67] While the focus of this case is compensatory in nature, there is also a substitutive function.

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63 Substantive judgment, above n 1, at [687].

64 See *Day v Mead* [1987] 2 NZLR 443 (CA) at 463. This is also reflected in Interest on Money Claims Act 2016, s 3(1).

65 See the substantive judgment, above n 1, at [672]–[673] for discussion of this issue.

66 *Equiticorp Industries Group Ltd (in stat man) v The Crown (no 3) (Judgment no 51)*, above n 29, at 701–702.

67 At 702.

That is, equitable compensation ensures the value of the benefit generating aspect of the land is restored to the trust. In that respect, Smellie J's observations have application here.

[101] Moreover, the Crown submits that the statutory rates do not appropriately reflect returns on trust investments, let alone ones with the general characteristics of the trust in question. The Court of Appeal has said that the prescribed rate under s 87 of the Judicature Act is a "maximum rate", it is not an indication of the rate that the Court is obliged to award or should award.[68] I also accept the Crown's submission that a statutory rate is generally fixed over a relatively long period and is not sufficiently responsive to a changing interest rate over time. In these circumstances, the statutory interest rate appears to be a poor proxy for the investment returns that a trust fund having the same characteristics of the one in issue could expect to receive.

(c) NZGS rates

[102] That just leaves the NZGS rate. I agree with the Crown that this rate more closely reflects the attributes of the trust fund at issue. The NZGS rate is a risk-free rate which reflects the fact that the trust was intended to last for a very long time. More importantly, it reflects the fact that the trust was for the benefit of all Customary Owners and their descendants. "Benefit" was not limited to the generation of an income stream for the beneficiaries. It included the building of institutions for the exclusive benefit of the Customary Owners. While the NZGS rate is very conservative, it is nevertheless the rate which most closely aligns with the unique characteristics of the "trust fund" in issue, and the overall objective of restoring to the trust that which was lost by virtue of the breach.

[103] In conclusion, adopting a broad-brush approach, and having regard to the characteristics of the trust in this case, I consider the NZGS rate accords with equitable principle and is the most appropriate rate in all the circumstances. I order accordingly.

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68 *Kirk v Vallant Hooker & Partners* (2009) 15 PRNZ 9 (CA) at [19].

Declaratory relief

[104] The parties have agreed the form of declarations sought by relief. These were set out in an appendix to the joint memorandum of counsel dated 18 July 2025, as follows:

> 1. The Court declares that the plaintiff, Rore Pat Stafford, is entitled in his capacity as plaintiff, rangatira and representative of the descendants of the Customary Owners, and as a beneficiary of the trusts found by this Court in *Stafford v Attorney-General* [2024] NZHC 3110, at [642]-[646], [1014]-[1016] (**Tenths Trust**), to obtain as relief declarations [2]-[6] below.
>
> 2. Subject to declaration 6, the Court declares that the Crown holds on trust the land owned by the Crown within the Spain award area, for the benefit of the Customary Owners and their descendants, to the extent set out in this judgment, and as more particularly listed in **Schedule A** (**Tenths Trust Land**).
>
> 3. Pursuant to ss 112 and 114 of the Trusts Act 2019, the Court removes the Crown as trustee of the Tenths Trust, and appoints the following people to replace the Crown (**Replacement Trustees**):
>
> 3.1 Rore Pat Stafford
>
> 3.2. Jamie Tuuta
>
> 3.3. Kerensa Johnston
>
> 3.4. George Stafford
>
> 3.5. Riria Te Kanawa
>
> 3.6. Roma Hippolite
>
> 3.6. Hone McGregor
>
> 3.8. Olivia Hall
>
> 3.9. Jeremy Banks
>
> 3.10. Nicole Akuhata
>
> 3.11. Hemi Sundgren
>
> 3.12. Rōpata Taylor
>
> 3.13. Russell (Barney) Thomas
>
> 3.14. Peter Meihana

4. The Court declares that the Crown is required to transfer legal title to the Tenths Trust Land to the Replacement Trustees within 12 months of the making of this declaration, or longer if more time is reasonably and practically required with respect to particular properties.

5. The Court declares that the Crown is required to pay a monetary sum of **[$x]** to the Tenths Trust within six weeks of the making of this declaration.

6. To the extent, contrary to declaration 2 above, that land listed in Schedule A is not held on trust, the Crown is to pay equitable compensation for the shortfall in the Tenths Trust Land as a result of that land not being held on trust. The equitable compensation to be paid for this shortfall is to be calculated in accordance with this judgment.

[105] Declaration 1 reflects the findings made in the substantive judgment concerning Mr Stafford's representative status and entitlement to receive relief.

[106] Declaration 2 relates to the identification of the land held on trust, as set out in Schedule A to the orders. This Declaration is subject to Declaration 6 (addressed below). Schedule A to the draft declarations will need to be updated to reflect the final decision made on the land held subject to trust.

[107] The order set out at [3] of the draft orders was made on 24 July 2025. The Crown consented to its removal as trustee and did not oppose the appointment of those listed in the order. In the absence of any information before the Court which raised issues about the fit and proper nature of the named individuals to act as trustee, I made the order sought.

[108] Declaration 4 reflects the agreement reached between the parties as to the transfer of land and the timeframe within which the transfer will be done. It is couched as a declaration because s 17(2) of the Crown Proceedings Act 1950 prohibits a Court from making an order against the Crown. The convention is that the Crown will abide by any declarations made by the Court. Given that convention, the broad basis for an extension of time is left as the parties agreed it, and without requiring the further involvement of the Court.

[109] Declaration 5 requires the final sum to be fixed. That will depend on the determinations made in this judgment, and the extent to which the process the subject of Declaration 6 has been completed.

[110] Declaration 6 reflects agreement between the parties in relation to the identification of Crown land within the Spain award boundary which may not be able to be held on trust due to the operation of statute (for example, land taken under the Public Works Act 1981, and Government Roading Powers Act 1989). The parties have agreed that, to the extent that a statute operates to extinguish equitable title that would otherwise exist in a parcel of Crown land, then additional equitable compensation will be paid. The process of identifying the affected land is ongoing. Declaration 6 allows that process to continue without delaying final resolution of the judgment.

[111] The final form of relief will need to be fixed in accordance with this judgment. Schedule A to Declaration 2 will need to be updated, and the sum referred to in Declaration 5 will need to be calculated. The parties have had five working days' notice of delivery of this judgment. They will have another five days to prepare a joint memorandum with that information. Following receipt of that joint memorandum, declarations in the above form will be made on the papers in a third and final judgment in this proceeding.

Result

[112] I find for the plaintiff in relation to all outstanding issues with the exception of the applicable interest rate and period. I find for the Crown on those two issues.

[113] Within five working days of the delivery of this judgment, the parties shall file a joint memorandum:

(a) providing an updated Schedule A to Declaration 2; and

(b) specifying the sum to be inserted in Declaration 5.

[114] Formal declarations in accordance with those set out at [104] above will be made on the papers following receipt of that joint memorandum.

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Edwards J