OFFICIAL

IN THE WAITANGI TRIBUNAL	**WAI 2750** **WAI 779**
UNDER	The Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	Kaupapa Inquiry into claims concerning Housing Policy and Services
AND	
IN THE MATTER OF	A claim by Donna Washbrook and Warren Moetara, for and on behalf of the Descendants of Nga uri O Iehu Moetara Trust (Wai 779)

AMENDED STATEMENT OF CLAIM DATED 29 JUNE 2018

RECEIVED
Waitangi Tribunal
29 Jun 2018
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

PART A: Introduction, The Claim, the Duties, the Breaches

1. Māori land is a taonga tuku iho, a treasure handed down through the generations. Māori land has significant cultural and social value, and the desire to live on the land is often described in terms of fostering well-being for the community and as a source of mana.[1]

2. Māori land is an asset that can make building a house more affordable for those who hold shares in the land. Where Māori already own the land, the costs of developing housing are reduced. This reduction can range from 15% to 40%, depending on land values.[2] Māori wish to utilise their land in the best way they see fit. However, when the Crown now owns what was originally Māori ancestral land, this creates issues for Māori who seek to have their ancestral land returned and utilised.

3. The claimants are Donna Washbrook and Warren Moetara who bring this claim for and on behalf of the Descendants of Nga uri O Iehu Moetara Trust.

4. The claimants say that this claim falls within section 6(1) of the Treaty of Waitangi Act 1975, namely that they are Māori; and they have been and continue to be or are likely to be prejudicially affected by the various Acts and Crown policies, practices, acts and omissions adopted by, or on behalf of the Crown or its agents.

5. The claimants have presented evidence before the Te Paparahi o Te Raki Tribunal in relation to the historical breaches of Te Tiriti which have occurred in relation to the former Pakanae school lands. The claimants now file this statement of claim for inclusion in the Wai 2750 Housing Policy and Services Inquiry ("Housing Inquiry") and seek to provide new evidence in relation to the Pakanae school teachers residence and the contemporary breaches of Te

[1] Controller and Auditor General *Government planning and support for housing on Māori land* (August 2011) at [2.4].
[2] Above n 1, at [2.9].

Tiriti which the claimants and their whanau have suffered as a result of Crown actions and omissions.

6. A teacher's residence to house the Pakanae school teacher was built on the claimants' tupuna land following a proclamation in 1940 which declared two roods of Pakanae No 2 be taken for a school site under the Public Works Act 1928. When the Pakanae school closed down in 1972 the Pakanae school teacher's residence ("teacher's residence") was used to house another local school teacher from Omapere school. The claimants tupuna owned the land which the teachers residence was built on.

7. Today the teacher's residence is no longer being used for educational purposes and has been declared surplus to requirements by the Crown. The condition of the teacher's residence and the land it sits on is deteriorating, and the property is overgrown.

8. The Crown has a duty to do everything it can to protect the land and resources of Māori. This includes the protection of land which was acquired from Māori for public works, and land which could in the future be set aside and used by Māori. The Crown has a duty to work in partnership with Māori and to ensure each of its Departments work in partnership and good faith with Māori to protect their land and resources.

9. The Crown has failed to work in partnership and good faith with the claimants and has failed to return their tupuna land which was acquired for educational purposes and is now surplus to Crown requirements. The Crown has failed to consult with the claimants when they were aware of the claimants' interests in the surplus land. The Crown has failed to correctly follow its own policies and procedures in relation to the return of gifted land and the return of land under the Public Works Act 1981.

10. The contemporary issues raised in this statement of claim are of national scale and significance, and they are happening everywhere. There are Māori from all over the country who have filed claims in the Waitangi Tribunal in relation to historical breaches of Te Tiriti who are seeking to have their claims settled. The

current settlement policy followed and used by the Crown is prejudicial to Māori who seek to be directly involved in the settlement of their claims. The focus of this claim is not in relation to the Crowns historical acts and omissions, but rather in relation to contemporary actions the Crown can take whilst a claim is still before the Waitangi Tribunal and is awaiting settlement.

11. The Chief Judge has acknowledged issues that exist in identifying owners of land with different agencies such as the Māori Land Court and the Māori Trustee all having separate databases with addresses of Māori land owners. [3] Issues concerning the Crown's failure to identify and consult with Maori and the impact this has had on the return of tupuna land is discussed in this statement of claim. These are issues of national scale and significance which Māori from around the country have also been subjected to.

PART B: Land for a Teachers Residence

12. For over 30 years the claimants and their whanau have been trying to resolve issues concerning the return of their tupuna lands which were acquired and used for the Pakanae school.

13. The history concerning the ownership of the Pakanae school land blocks is set out in detail in the Wai 779 statement of claim[4], briefs of evidence[5] and closing submissions[6] presented before the Te Paparahi o Te Raki Inquiry.

14. The claimants submit that their tupuna never sold their lands which were used for the Pakanae school site, nor did they receive any compensation for the land takings which resulted. The focus of this claim in the Housing Inquiry is in relation to the land which was acquired and used for a teacher's residence.

[3] Chief Judge W Isaac "Māori Land Today" (Māori Land Court, Judges Corner, May 2011).
[4] Wai 779 #1.1.(e) Amended Statement of Claim dated 19 May 2017.
[5] Wai 1040 #X3(a), Wai 1040 #X3(b), Wai 1040 #X6(b), Wai 1040 #X6(c), Wai 1040 #AA77(b), Wai 1040 #AA77(c), Wai 1040 #AA78.
[6] Wai 1040# 3.3.268(a).

15. On 9 April 1937 the Education Board wrote to the Pakanae school committee advising that they have submitted an application to the Education Department for a grant for the erection of a teacher's residence.

16. The claimants' tupuna Iehu Moetara had succeeded to his parents' interests in the Pakanae land block in 1922.

17. In 1937 Iehu agreed to gift the land for a teacher's residence.

18. It was uncovered, however, that the land which Iehu had agreed to gift had already been vested in the Tokerau District Māori Land Board in 1908 for a church site.

19. On 23 August 1939 the Education Board approved of the vesting for school purposes an area of half an acre for a teacher's residence.[7]

20. On 9 March 1940 a proclamation was made declaring two roods of Part Pakanae No 2 block taken under the Public Works Act 1928 for the purpose of a public school.[8]

21. No compensation was awarded.

22. On 9 March 1940, 2 roods of Pakanae No 2, being the former church site retained by the Tokerau District Māori Land Board, was vested in the Education Board of the District of Auckland.[9]

23. Since the land was vested in the Tokerau District Māori Land Board and subsequently vested in the Education Board for a teacher's residence, the claimants and their whanau have been unable utilise the teacher's residence and the land it is situated on for over seventy years.

[7] Amended Statement of Claim dated 19 May 2017 at 19.
[8] (1940) 21 *New Zealand Gazette* 378.
[9] HK MB Vol 16/Fol 305-307.

Crown Surplus Land Disposal Process

24. There are four key stages involved in the Crowns disposal process for surplus lands.

25. In Stage one where a Crown property is no longer required the agency must[10]:
    a) Decide it no longer requires the property for its operations;
    b) Obtain ministerial consent to dispose of the property, if necessary;
    c) Obtain a title for the property, if the property is not already held in a title or is being subdivided from a larger area. A subdivision consent under the Resource Management Act 1991 may be required;
    d) Advise iwi through a preliminary notice, if required by a particular Treaty settlement;
    e) Consider whether any values on the property should be protected before disposal;
    f) Advise the following agencies:
        i) Department of Conservation to identify any marginal strips or conservation values on the property;
        ii) Heritage New Zealand to identify any heritage values on the property;
        iii) Housing New Zealand Corporation to decide whether the property can be used for housing;
        iv) Ministry of Business, Innovation and Employment to decide whether the property can be used for housing.

26. At this stage, other Crown agencies such as government departments or local authorities may request the property. If agreed to by Land Information New Zealand ("LINZ"), these transfers are made under the Public Works Act.

27. In Stage two there is an offer-back process whereby under s 40(2) of the Public Works Act 1981, the Crown must offer to sell the land to the person from

[10] Land Information New Zealand "Crown property disposal process" (8 May 2018) <www.linz.govt.nz>.

whom it was acquired, or their successor (unless an exception applies). This is generally at market value.[11]

28. If land was gifted to the Crown for a particular purpose, it may be offered back to the donor at no cost under the government's Gifted Lands policies.

29. Stage three of the disposal process involves Treaty settlements whereby the agency must either[12]:
    a) Offer the property for sale to an iwi under a Right of First Refusal provision in its Treaty settlement, unless an exception applies; or
    b) Apply the Māori Protection Mechanism (protects Māori interest in Crown owned land which has been identified for disposal) and Sites of Significance processes, if the property is in an area where a Treaty settlement has not been reached.

30. Stage four of the disposal process applies if the property is not disposed of at any of the earlier stages, whereby the agency can put the property on the open market for sale by public tender, auction or listing with a licensed real estate agent.[13]

Disposal of Teachers Residence

31. Since as early as 2011 the claimants and the claimants' lawyers have been in contact with Crown agents in relation to the disposal of the Crown surplus land which was used for the Pakanae teacher's residence, and which was subsequently advertised as being that land, as shown in plan LT430926.

32. Counsel from Te Mata Law have been in contact with Darroch who is LINZ disposal agent, in relation to the disposal of the Crown surplus land since 2014.

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[11] Land Information New Zealand "Crown property disposal process" (8 May 2018) <www.linz.govt.nz>.
[12] Land Information New Zealand "Crown property disposal process" (8 May 2018) <www.linz.govt.nz>.
[13] Land Information New Zealand "Crown property disposal process" (8 May 2018) <www.linz.govt.nz>.

33. Numerous letters have been sent to and from the lawyers for the claimants, to Crown agencies including the Minister of Education, LINZ and Darroch in relation to the return of the surplus land and the involvement of the claimants within this process.

34. Despite years of correspondence, requests for meetings to take place to discuss the return of the land and years of work which has gone into presenting the claimants Wai 779 claim before the Te Paparahi o Te Raki Inquiry, the claimants have continued to remain invisible to the Crown and its agents throughout the entire process, and have not been consulted or included in the process to date; when clearly there is evidence to show they should be included.

35. Despite having the claimants' contact details and contact details for their lawyers, the Crown, through its agents, has continued in its process to dispose of the land without consulting, meeting or corresponding with the claimants.

Gifted Lands Policy

36. LINZ has a specific policy for returning gifted lands. A vendor agency that wishes to dispose of land that was gifted must comply with the gifted land policy (GLP) and must apply to LINZ with specific information. [14]

37. If land was gifted the vendor agency must provide a report to LINZ that sets out:
    a) the circumstances and components of the gift;
    b) the name of the donor;
    c) whether there are any statutory obligations or practical considerations that would limit application of the GLP;
    d) whether the GLP should be effected by the provisions of s 40. If the beneficially entitled person is the same as the successor to the former owner, then s 40 must be used to effect the GLP. If the beneficially

[14] Land Information New Zealand *Standard for disposal of land held for a public work* (LINZS15000, November 2009).

entitled person is different from the successor, s 40 must be addressed first and then the GLP applied;

e) identification of any improvements, their value and how such improvements will be treated in any offer;

f) confirmation that the donor or beneficially entitled person is interested in receiving an offer of the land and to purchase the improvements, and

g) a recommendation on the application of the GLP.[15]

38. If the GLP is effected by the provisions of s 40, the vendor agency must, in addition to providing the information, seek approval to return the land for nil consideration under s 40(2)(d) of the Public Works Act 1981. [16]

39. Where a vendor agency returns gifted land at nil consideration, it is entitled to reimbursement for the value of the land. [17]

40. To enable LINZ to apply to Treasury for an appropriation to reimburse the vendor agency, the vendor agency must supply LINZ Crown Property Management (CPM) with:

a) confirmation of the decision to apply the GLP; and

b) valuation of the gifted land prepared by an independent registered valuer with appropriate qualifications and experience, given the nature of the land.[18]

41. A vendor agency must present any offer to a donor to the Chief Executive of LINZ with a report and recommendation containing evidence that:

a) reasonable efforts have been made to locate the donor or any beneficially entitled persons;

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[15] Land Information New Zealand *Standard for disposal of land held for a public work* (LINZS15000, November 2009).
[16] Land Information New Zealand *Standard for disposal of land held for a public work* (LINZS15000, November 2009).
[17] Land Information New Zealand *Standard for disposal of land held for a public work* (LINZS15000, November 2009).
[18] Land Information New Zealand *Standard for disposal of land held for a public work* (LINZS15000, November 2009).

b) the donor or any beneficially entitled person is entitled to receive an offer; and
c) CPM has agreed to seek an appropriation. [19]

42. When LINZ is required to execute an offer of gifted land, the offer must be made by an agreement for sale and purchase with the following additional conditions:
    a) the offer is open for a specified period;
    b) settlement will occur only upon approval of an appropriation for the value of the gifted component of the property and when a computer freehold register is available; and
    c) it is noted in the agreement that the land is being returned under the GLP.[20]

43. If an offer of gifted land is being effected by the provisions of s 40, then the requirements in (b) are, when not in conflict with s 40, in addition to the conditions in the agreement for sale and purchase.[21]

44. A covering letter must accompany any offer to a donor, including:

    a) reasons why the offer is being made, including the relationship of the offeree to the donor, where applicable;
    b) a brief history of the acquisition of the land for a public work;
    c) brief details about what is being offered, including how any improvements on the land are to be treated;
    d) advice of any encumbrances or other conditions that the offer is subject to;
    e) the period for which the offer remains open;
    f) instructions on how to take up the offer;

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[19] Land Information New Zealand *Standard for disposal of land held for a public work* (LINZS15000, November 2009).
[20] Land Information New Zealand *Standard for disposal of land held for a public work* (LINZS15000, November 2009).
[21] Land Information New Zealand *Standard for disposal of land held for a public work* (LINZS15000, November 2009).

g) a disclaimer to the effect that the offeree should consult their own solicitor for advice about their rights and options; and

h) concluding the gifted land policy process.[22]

45. A vendor agency must obtain sign-off from LINZ that the GLP process has been completed when a donor:

a) cannot be located;

b) cannot produce evidence of entitlement; or

c) declines the offer.

46. The claimants submit that it was always the intention of their tupuna to gift land for the Pakanae school and teacher's residence. However, the Crown through its various Acts and policies formerly acquired the land through Public Works legislation.

47. The Crown through the Ministry of Education failed to acknowledge the original intention of the claimants' tupuna to gift the land for the teacher's residence. The Crown has failed to treat the land as gifted land despite the claimants' tupuna stating in the Native Land Court that it is his intention to gift the land, and despite the claimants' tupuna receiving nil compensation for the acquisition of the teacher's residence under the Public Works Act 1928.

48. The Crown's failure to identify and acknowledge that the land was intended to be gifted has excluded the claimants from having their tupuna land returned under the Crown's GLP.

49. Under the GLP there is an option for the land to be returned to the claimants with nil consideration. This outcome would have been the most ideal option for the claimants and would have been justified given the land was acquired under the Public Works Act 1928 with nil compensation.

[22] Land Information New Zealand *Standard for disposal of land held for a public work* (LINZS15000, November 2009).

50. The Crown has failed to follow its own policies and has failed to work in partnership with the claimants to return their land in a manner which would have allowed the claimants to receive their tupuna land without financial burden.

Land Banking

51. On 4 February 2018 the Crown advertised the former teacher's residence for land banking. The closing date for any land banking applications was 9 March 2018. The claimants were not directly notified that the property was available for land banking. The claimants were made aware through a friend that the former teacher's residence was advertised for land banking.

52. On 15 February 2018 counsel for the claimants contacted Darroch who had been listed as the disposal agent for the property and enquired about the surplus teacher's residence which was given LINZ ID #2910668, Waiotemarama Gorge Road. Counsel asked Darroch what steps had been taken between the disposal status of this land being "section 40 Public Works 1981 investigation" and the current disposal status which is "land bank".

53. Darroch responded that the property being enquired about is presently being considered by the Office of Treaty Settlements ("OTS") under the Governments Māori Protection mechanism.

54. On 16 February 2018 counsel for the claimants contacted OTS in relation to the teacher's residence which they were accepting land banking applications for. Counsel advised OTS that in 2011 Darroch wrote a report on the surplus Pakanae school site and made recommendations that particular parts should be offered back to the original owners or their successors. Counsel asked OTS to advise whether those recommendations were acted upon or to advise exactly what steps Darroch or LINZ or the Education Department may have taken between the site being part of the "Public Works Investigation stage" and the current "land banking stage".

55. On 16 February OTS replied that this property was offered to the Māori Trustee on 12 October 2016 in order to satisfy the Crowns obligations to offer the property back to the former owners or successors pursuant to sections 40(2)(c) and 42(1)(d) Public Works Act 1981.

56. The offer was due to expire on 8 December 2016 however in late November the Māori Trustee requested an extension of time to 1 April 2017 in order for them to undertake further investigations.

57. On Tuesday 11 April 2017 the Māori Trustee advised that they were unable to make a decision regarding the acquisition of the property. This was due to the Māori Trustee being unable to identify and contact the person(s) entitled to exercise this option.

58. Shortly afterward LINZ Clearances confirmed that the Crowns obligations under section 40 Public Works Act 1981 had been satisfied. Darroch then tidied up some issues around easements and when that was done the property was submitted to OTS on 20 November 2017 for actioning in terms of the Governments Māori Protection Mechanism. The property is still with OTS.

59. Despite years of correspondence and requests by the claimants to be kept informed about the disposal process for the Pakanae school and teacher's residence, the claimants and their counsel were not contacted when the surplus land moved through to stage two and stage three of the Crown's disposal process.

60. The claimants are the successors of the former owners of the teacher's residence land. The Crown had a duty to contact the claimants pursuant to sections 40(2)(c) and 42(1)(d) of the Public Works Act 1981.

61. The Crown has failed to acknowledge the correct history regarding the former ownership of the Pakanae teacher's residence land and has failed to consult with the correct successors of the former owners. The Crown consulted with the Māori Trustee as successor to the former Tokerau District Māori Land Board whom the land for the teacher's residence had been formerly vested in;

however, prior to the land being vested in the Tokerau District Māori Land Board the land was owned by the claimants' tupuna.

62. The issue of vesting land in the Tokerau District Māori Land Board has been acknowledged as a breach of the Treaty by the Crown in the Te Paparahi o Te Raki Inquiry. The Crown has conceded that the compulsory vesting of land in the Tokerau District Māori Land Board between 1907 and 1909 without owner consent breached the Treaty of Waitangi and its principles.[23]

63. Despite this initial breach of the Treaty when the land was vested in the Tokerau District Māori Land Board, further breaches of the Treaty have continued to take place. The Crown's ongoing failure to work in partnership with the claimants to return their tupuna land which is currently in Crown ownership, and is surplus to requirements, is a further breach of the Treaty.

64. The claimants and their counsel had informed Crown agents on numerous occasions that the claimants have interests in the surplus land and that would like to be involved in discussions and meet to discuss the return of any surplus land.

65. On no occasion did any Crown department agree to meet with the claimants.

66. Crown agents and Crown departments were aware of the claimants' interests in the teacher's residence land and despite this knowledge they failed to consult with the claimants directly. Further, they failed to pass on the claimants' contact details to the Māori Trustee, who were trying to make contact with the former owners or their successors.

67. Documentation acquired under the Official Information Act shows that Crown Departments were aware that Iehu Moetara was the former owner of the land and yet they chose not to act in good faith and chose not to pass on our claimants' contact details to the Māori Trustee.

[23] Wai 1040 #1.4.2 pg 21.

68. The Crown has consistently failed to act in partnership with the claimants despite all of the claimants' best efforts to be involved in the disposal process. The claimants are beyond frustrated at the Crowns failure to act in good faith and partnership and their failure to protect their tupuna land from being subject to further alienation.

69. On 9 March 2018 the claimants submitted an application for land banking as there was no other avenue available for them to have the surplus land returned, prior to the Te Paparahi o Te Raki Tribunal reporting on their Wai 779 claim.

70. If the land banking application is successful, the land will be placed in the regional land bank and will be available as either cultural or commercial redress for a future Treaty settlement.

71. Whilst the land banking process can assist to protect the teacher's residence from being sold privately the land banking does not ensure the claimants will receive the land as part of a future Treaty settlement.

72. The Crowns land banking policy is prejudicial to the claimants as even if their application is successful, the land is not held exclusively for the claimants. Rather, the land would be available to any party who may seek to have the former teacher's residence included as part of their Treaty settlement.

Crowns Treaty Settlement Policy

73. The Crowns Treaty settlement policy and its preference to negotiate with large natural groupings[24] is also prejudicial to the claimants, as it removes the claimant voice from the settlement process and allows others to potentially speak and act on behalf of the claimants who submitted the Wai 779 claim, and who have provided extensive evidence before the Tribunal in relation to the breaches of the Treaty.

[24] Healing the Past Building A Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown. Accessed from https://www.govt.nz/assets/Documents/Red-Book-Healing-the-past-building-a-future.pdf as at 26 June 2018.

PART C: PREJUDICE

74. As a result of the Crown breaches alleged in this claim, Māori have suffered. That suffering includes:

a) Being repeatedly ignored by the Crown and its agents and Departments;
b) A breakdown of families and emotional stress to whanau;
c) A loss of mana;
d) Being unable to utilise ancestral land;
e) Being unable reside on ancestral land which is in current Crown ownership.

PART D: FINDINGS AND RECOMMENDATIONS

The claimants welcome a finding that this claim is well-founded and seek the following recommendations:

a) That the Crown apologise for the breaches of Te Tiriti which the claimants and their whanau have been subject to;
b) That the Crown return the former teachers residence and land which is the claimants tupuna land, to the descendants of the original owners;
c) That the Crown work in partnership and good faith with Māori to return Māori ancestral land which is in Crown ownership;
d) That the Crown amend current settlement policy to enable the Crown to settle with individual Waitangi Tribunal claims and whanau;
e) That the claimants and their whanau be compensated for the use of the teacher's residence land which they have been unable to access and utilise whilst it has been in Crown ownership;
f) That the Crown put in place a mechanism for individual Māori and whanau to be given a right of first refusal to purchase former Māori land which is now in private ownership when this land is tendered for sale.

DATED at Auckland this 29th day of June 2018.

David Martin Stone | Catherine Leauga
Counsel for the claimant

TO: The Registrar, Waitangi Tribunal; Crown Law Office; and those on the notification list for the Wai 2750 Housing Policy and Services Kaupapa Inquiry.