Wai 1200, 1.1.6(c)
Wai 1200, 1.1.50(c)
Wai 1200, 1.1.54(e)
Wai 1200, 1.1.86(b)
Wai 1200, 1.1.122(b)
Wai 1200, 1.1.125(b)
Wai 1200, 1.1.156(b)
Wai 1200, 1.1.164(b)

IN THE WAITANGI TRIBUNAL

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of claims in the Central North Island Inquiry (WAI 1200)

AND

IN THE MATTER of a claim by **MACK CLARKE, Mrs WINIFRED McKENZIE, Ms KIM TE TUA, Mr HAMUERA HODGE, Mr ERIC HODGE, Ms BEVERLEY HODGE, Mrs KIRI POTAKA DEWES, Mrs KAHU SUBRITZKY, Mrs SUSAN THOMPSON, Mr ERIC TOM WALTERS and Mr TUKEKERU DANSEY**
("The Claimants")

AMENDED PARTICULARISED STATEMENT OF CLAIM FOR TE TAKERE O NGA WAI

DATED THE 8TH DAY OF DECEMBER 2004

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1.0 The Claimants

1.1. The Claimants are:

1.1.1 Mr **MACK CLARKE** on behalf of himself and other descendants and whanau **OF PAORA HAPIMANA TE HURIWAKA (Wai 841);**

1.1.2 Mrs **WINIFRED NGAROMA McKENZIE** on behalf of herself and other members of **NGATI RAUHOTO-A-TIA** and **NGATI TUWHARETOA (Wai 43);**

1.1.3 Ms **KIM TE TUA** on behalf of herself and other members of Ngati **PAREHUNUKU** and **NGATI RAUHOTO-A TIA (Wai 358);**

1.1.4 Mr **HAMUERA HODGE**, Mr **ERIC HODGE**, and Ms **BEVERLEY HODGE** on behalf of themselves and the **HODGE WHANAU (Wai 1141);**

1.1.5 Mrs **KIRI POTAKA-DEWES** on behalf of herself and other members of **WAHIAO** and **TUOHOHOA (Wai 319);**

1.1.6 Mrs **KAHU SUBRITZKY, ALICE GLORIA MCLAUGHLIN,** and **PEGGY HINETAHA KINGI** on behalf of themselves and the beneficiaries of the estate of **ARAROA WILLIAM MCLAUGHLIN (Wai 629);**

1.1.7 Mrs **SUSAN THOMPSON** on behalf of herself and other descendants of **TARAWERA MATATAHI (Wai 911);**

1.1.8 Mr **ERIC TOM WALTERS** on behalf of himself and the descendants of **TE ARAWA** and **NGATI TUWHARETOA; (Wai 1195);**

1.1.9 Mr **TUKEKERU DANSEY** an as yet unregistered claim.

1.2 The Claimants come together as *Te Takere o Nga Wai,* a collective of descendants of the eponymous ancestors:

a. Ngatoroirangi/Kuiwai/Tama te Kapua

b. Tia/Rauhoto-a-Tia

c. Tahumatua

d. Kurapoto/Rauhoto Matua

e. Kikopiri

1.3 The claimants represent a number of hapu and individual interests within the Taupo region and have come together to mark the distinct footprints that their ancestors have left ingrained within their memories, within their hearts, within their whenua.

1.4 In marking the significators of their ancestral presence *Te Takere o Nga Wai* come together before the Waitangi Tribunal in the Central North Island District Inquiry to pursue claims against the Crown that were in breach of or contrary to Te Tiriti o Waitangi before the Waitangi Tribunal.

2.0 The Claim

2.1 This Statement of Claim sets out the grievances of Te Takere o Nga Wai in the Central North Island District Inquiry of the Waitangi Tribunal.

2.2 From the outset, it has been the intention of the claimants to approach the description of their histories in a holistic and contextual sense, so that the true prejudice of Crown injustice and prejudice may begin to be understood as it was meted out to their tuupuna. It is unfortunate that administrative efficacy has been put ahead of their '*need to heal*'. The pressured and hastened timeframes which have taken no consideration of incomplete research have therefore denied the ability of Te Takere o Nga Wai to explain their histories in their unique way.

2.3 They assert that what they are being pressured into can be likened to reciting the first half of a tauparapara before it has been learnt in its entirety. In this sense they assert that they are being forced by this process to depart from their customs and traditions in order to describe that which tore them from their customs and traditions.

2.4 In this absence of complete contextual analysis, the actual impacts of Crown action and omission will perceptually dilute which will preclude a full understanding of the plight of the peoples of while their histories remain hidden within the dusty tomes of western bureaucratic justification. Not only will the histories remain untold, there will be no one left to tell them.

2.5 This claim focuses on the peoples of Taupo. Their worlds from their collective pasts, guiding and defining the many existences of their descendants out into Te Ao Hurihuri and into yet to be constrained futures, weaving the peoples into the dynamic tapestry of intersecting polities that connect the diverse realities that have characterised their histories and will continue to shape their many futures.

2.6 This claim concentrates on the ways in which the Crown has contributed to the unravelling of these tapestries and the minimalisation of the Mana Taketake of

those who come together as Te Takere o Nga Wai and the ongoing rights of autonomy and the intrinsic integrity of those peoples in their ability to maintain their unique identities.

2.7 In doing so, this claim will focus on the mechanisms and processes of the Crown that historically have manipulated and controlled the relationships that exist between the dynamic polities as they have existed and developed the hearts and minds of the peoples of Taupo.

2.8 What will be highlighted is the Crown's unceasing inclination to elevate the opinions of those it wants to listen to, while invisibilising those that swim against the tide of colonial policy. Active protection becomes a gift then to bestow on those who 'tow the *Crown* line,' and autonomy is something that is available so long as one does what colonial law allows.

2.9 The deliberate Crown intervention and imposition of their values was critical in causing the destruction of traditional leadership and the dislocation of social relationships between hapu and whanau. This assimilative strategy combining consistent non-recognition of Maori norms coupled with the unrelenting imposition of Crown models was tantamount to a cultural genocide that has drastically affected the peoples eroding their identities and their tino rangatiratanga.

2.10 The act of genocide basically breaches every principle, rule, canon and standard on the planet. It is the total destroyer of faith, as, any ideal; notion; belief; ceases when your existence is extinguished.

2.11 While this claim presents the stance of Te Takere o Nga Wai in their efforts to defend their traditional ways and their pasts, it is also a sign of their desire to defend their rights to govern and to determine their destinies and those of their descendants that will follow.

2.12 The primary focus of this claim is therefore the impact of acts and omissions of the Crown that were and remain in breach of Te Tiriti o Waitangi on the cultural, spiritual, social and economic way of life of the descendants of the eponymous

ancestors mentioned above, specifically protected and guaranteed by Te Tiriti o Waitangi.

2.13 The claim also relates to the areas of land, lakes, rivers, seabeds, islands, traditional fishing grounds, forests and the indigenous flora and fauna and other species; waahi tapu and other sites of cultural, spiritual and historic significance; and other taonga tuku iho me nga taonga heke iho, which the claimants continue to connect and relate to notwithstanding the lego-political separations that have been imposed in the Crown's systematic assumptions of sovereignty and denigration of rangatiratanga.

2.14 The claimants state that they are or are likely to be prejudicially affected by the Ordinances, Acts, Regulations, Proclamations, Notices and other Statutory Instruments, and the policies, practices, acts or omissions of the Crown as are particularised in this statement of claim.

2.15 The claimants further state that all of the Acts, Regulations, Orders, policies, practices and actions taken, omitted or adopted by or on behalf of the Crown referred to are and remain inconsistent with the terms and principles of the Treaty of Waitangi.

2.16 The Claimants say that they, their tipuna and their mokopuna that will follow, have been, are, or are likely to be prejudicially affected by the ordinances, acts, regulations, proclamations, notices and other statutory instruments and the policy, practices, acts or omissions of the Crown which were and are inconsistent with the Treaty of Waitangi and its principles as further set out in this amended statement of claim.

2.17 The claimants will rely upon the evidence that is adduced before the Waitangi Tribunal throughout the Central North Island District Inquiry to the extent that it is relevant to the lands within the tribal domains of their tipuna and is descriptive of the process of colonization that saw the descendant Taupo whanau and hapu marginalized and invisibilised in processes introduced and supervised by successive Crown administrations.

3.0 Rohe

Ka titiro ki te ngahere e heke rano mai ki te wai ke kite hoki i te kakariki
O nga rakau e whakaora ana i nga hau a Tawhiri Matea e kore nei e mate
Hei nga mo tatau, mohio katoa matau he uri katoa nga rakau nei kia matau
Kei te paihere wairua katoa matau kia matau

O matau whanaungatanga ki nga ika a Tangaroa e whakapai i te wai heo oranga
Mo te Katoa, he oko horoi mo nga Tipuna
He hono Wairua matau kia matau
Nga Manu katoa a Tane a whakakiki nei te ngahere kia ratau waiata ka riro ko ratau ano hei kawe i nga kakano ki tawhiti
Ko o matau Wairua kei te honohono ia matau

Ko te Tangata ka whawha mai ke reweke renei
I nga mahi tukuiho ki o matau uri
Kei te raweke i te ao na nga Atua Maori i hanga
Koinei nei te tino putake ake o nga mahi a matau te Maori
Ko matau hoki nga Kaitiaki mai rano i te timatatanga mo nga uri whakaheke[1]

3.1 The peoples of Taupo assert interests that reach out from the indelible markers that have been left behind by their ancestors to be remembered by those who follow them.

3.2 The influence can be seen in their eastern reaches in tatau pounamu forged with the peoples of Te Urewera and in the west in shared whakapapa connections to Maniapoto and Raukawa.

3.3 The claimants do not seek to sever themselves from these enduring relationships and connections. They seek the reaffirmation of this rich and seamless tapestry that drapes over the form of Papatuanuku settling within her every fold.

[1] Na Tame Winitana

4.0 Preliminary Matters

4.1 This particularised statement of claim for the purposes of the Central North Island District inquiry is filed on behalf of Te Takere o Nga Wai. The particulars set out in this statement of claim are provided subject to the following provisos:

a) The particulars are to assist with the Tribunal process by identifying issues that are pertinent to the Claimants and their peoples, to facilitate logistical efficacy within the Stage I Generic Hearings. However, the particulars are not and cannot be a complete statement of the grievance of Te Takere o Nga Wai;

b) The provision of particulars does not affect the Crown's obligation to fully disclose in good faith all information relating to its dealings with Te Takere o Nga Wai, nor does it affect the Tribunal's inquisitional role as a Commission of Inquiry;

c) Te Takere o Nga Wai considers that the Crown has a duty to participate on a good faith basis in this process. An objective of the particulars is to facilitate the Crown in their endeavour to identify those claims that it considers are legitimate, so as to avoid unnecessary argument. The peoples of Taupo have identified the particulars included in this statement of claim. These continuous and repeated breaches by and on behalf of the Crown and its continuing failure to honour obligations and duties has compounded the detrimental impacts Te Takere o Nga Wai have had to contend with over time;

d) The particulars, while by no means exhaustive, highlight the continual and repeated attempts by the Crown to encroach on and diminish Te Tino Rangatiratanga o Nga Uri o nga Rangatira a

Taupo. As such they too will act in good faith on the understanding that the Crown, as its Treaty partner, will reciprocate in kind in recognising such claims;

e) The provision of particulars does not in any way alter the Te Takere o Nga Wai position that emphasises the illegitimacy of the Crown's presumption of sovereignty over the peoples and lands of Taupo;

f) As such, the paragraphs that follow provide particulars of Crown acts, omissions, practices, and the resultant breaches of the natural rights of Te Takere o Nga Wai as encapsulated by the principles of the Treaty. While each encroachment onto these rights is in itself representative of a deeply felt grievance, the cumulative effect of these encroachments is perhaps of more significance if we are to properly analyse the manner in which the Crown acted.

5.0 The Principles Of The Treaty Of Waitangi

5.1 As a starting point the claimants observe the text of Te Tiriti o Waitangi and expect the guarantees contained therein to be honoured. They rely on principles of Respect, Fairness and Natural Justice to guide their subjective understanding of the covenant in order that their philosophical foundations and cosmogenical connections be preserved.

5.2 The claimants assert that the Crown should deal with Maori in an honourable and good faith way, and should ensure the protection and prosperity of Maori as a people including their economic, physical, spiritual and cultural well being. In addition the claimants understand the Crown's fiduciary obligations to extend to:

5.2.1 **Active Protection** of Te Takere o Nga Wai to the fullest extent practicable in possession and control of their:[2]

a) property and taonga[3] and their rights to develop and expand such property and taonga using modern technologies;[4]

b) ongoing distinctive existence as a people albeit adapting as time passes and the combined society they develop;[5]

c) economic position and their ability to sustain their existence and their ways of life;[6] and

d) the Crown does not take advantage of the poverty of Maori, created at least in part by the Crown, to acquire land from

[2] Waitangi Tribunal Manukau Report 1985; Cooke P, Maori Council v. Attorney General (1987) 1 NZLR p641
[3] *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, PC, 517
[4] Muriwhenua Fishing Report, p220; Ngai Tahu Sea Fisheries Report, pp253–254
[5] *Taiaroa v Minister of Justice* (unreported HC Wgn CP 99/94, decision McGechan J, 29 August 1994) at p69
[6] Orakei Report, p147

Maori which Maori are selling just so the Maori can buy food to survive.

5.2.2 Ensuring the benefit from **Good Government** exhibited by the Crown ensuring the protection and promotion of:

a) entitlements to peace and law and order;[7]

b) the absence of discrimination in the eyes of the law and law makers;[8]

c) the determination of matters affecting Maori land by Maori in accordance with their own methods of reaching agreements;[9]

d) conditions that would enable the survival and progress;[10]

e) interests particular to Nga Hapu o Te Takere o nga Wai;[11] and

f) an inability to avoid the Crown's obligations by any delegation of the Crown's duties under the Treaty. [*Motunui-Waitara Report and the Manukau Report*, p73].

5.3 The claimants assert further that the Crown should **remedy past breaches** and not take advantage of levels of poverty and subordination that have been imposed following Crown injustice.[12]

5.4 As a consequence of the Crown's duties, the Crown was and is generally required to:

5.4.1 ensure the retention of rangatiratanga over turangawaewae;

5.4.2 actively protect recourse to spiritual and physical resources as they were traditionally managed;

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[7] *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 CA at 715 per Bisson J
[8] Note the Labour Government Statement of 1989 – Principle (C)
[9] *Taranaki Report* pp281–282
[10] *Muriwhenua Fishing Report*, p194
[11] *Manukau Report*, p69
[12] *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, CA, pp664-665

5.4.3 ensure that any change to traditional social structures are instigated and promoted from within rather than imposed from without;

5.4.4 ensure the retention of rangatiratanga over taonga, social structures, property and resources in accordance with their own laws, cultural preferences and customs;

5.4.5 recognize and protect the laws, customs, cultural and spiritual heritage of the claimants and the whanau and hapu descendants;

5.4.6 avoid policies and practices which would impact detrimentally on the spiritual expression which have been traditionally enjoyed; and

5.4.7 ensure that the impact of government and regulation upon the claimants is consistent with the Treaty and its principles and to actively protect Maori rangatiratanga, customs, laws and properties.

6.0 The Erosion of Rangatiratanga and the Derogation of Leadership

6.1 Breach

6.1.1 In breach of Te Tiriti o Waitangi, and contrary to their obligations to actively protect the rangatiratanga of Maori the Crown eroded and denigrated Nga Rangatira o Taupo in an attempt to pacify them and force them into complete submission before the Crown.

6.2 Particulars

6.2.1 With the imposed pacification of the peoples of Taupo and Kaingaroa, as well as the surrounding districts, settlers began to look to north-eastern Taupo and Kaingaroa with a view to farming sheep on the generally open land and natural grasslands to be found there. [13]

6.2.2 The government also briefly flirted with dealings in this area in 1866, but its dealings around in late 1866 were deemed to be injudicious at the time and were quickly set aside until the mood at Taupo was better suited to land dealing. [14]

6.2.3 Governor Grey and William Mair (who was briefly Taupo Resident Magistrate in 1864 and 1865) carried out attempts to secure the loyalty – or, rather, "complete submission" – of Te Heu Heu and Ngati Tuwharetoa, taking steps to humiliate the esteemed rangatira. [15]

6.2.4 During November 1866, Mair met at Maketu with pro-government rangatira of northern Taupo supplying them with ammunition. [16]

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[13] Stirling "Taupo-Kaingaroa Nineteenth Century Overview" Doc A71, p7
[14] Doc A71, Ibid p7
[15] Doc A71, Ibid p7
[16] Doc A71, Ibid p8

6.2.5 In 1870 Maori assumed unfriendly attitudes towards Pakeha, mistrusting their European words and actions and fearing the loss of mana if their country was thrown open.[17]

6.2.6 This was recognized by the Pakeha settler regime that viewed such unfriendly attitudes as one of their greatest ostensible obstacles.[18]

6.2.7 The settlement of the open country around northern Taupo and Kaingaroa from 1866 onwards preceded the re-establishment of any formal or permanent government presence in the district.[19]

6.2.8 It brought with it the Native Land Court and its associated costs – such as surveys, government charges, and the costs of attendance, giving Taupo Maori a taste of Pakeha land-hunger.[20]

Protection and Pacification

6.3 Breach

6.3.1 In breach of Te Tiriti o Waitangi, and contrary to their obligations to act in good faith, the Crown created and entrenched cycles of poverty within the Taupo region and then utilized this impoverishment to separate them from their land while creating a cheap workforce to facilitate the settlement of these lands.

6.3.2 In breach of their obligations of good faith, and good government, the Crown preyed on the poverty and fears of the peoples of Taupo, imposing an armed constabulary which aided in the erosion of Maori society and integrity.

[17] Doc A71, Ibid p4
[18] Doc A71, Ibid p4
[19] Doc A71, Ibid p4
[20] Doc A71, Ibid p4

6.4 Particulars

6.4.1 In the wake of the defeat of Te Kooti in Taupo, and his ejection from the district by the end of 1869, the government's focus in the Taupo area was in securing its hold over a strategically significant district, seeking principally to open up the area to more rapid military penetration, should that be required in the future.[21]

6.4.2 Focusing on pacification. Taupo and Kaingaroa were strategically located for the programme of pacification, which included a network of military roads and telegraph lines, defended by a series of redoubts and armed encampments.[22]

6.4.3 Existing tracks already in use by the military were improved, transforming them into roads including the road from Napier to Tapuaeharuru, which was referred to as a "purely strategical road".[23]

6.4.4 The offer of government work on the roads in the early 1870s was seized upon by a people struggling to re-establish themselves in their war-ravaged lands.[24]

6.4.5 Maori who accepted the road work and lived in the roading camps, in which the Armed Constabulary played a major role, were subjected to harsh conditions, poor pay, rotten over-priced rations, and a ready supply of military grog which left the Maori labourers worse off than their stay-at-home whanaunga.[25]

6.4.6 Imperial troops were unavailable so, unfortunately for Taupo Maori, a considerably lower standard of men were posted at Tapuaeharuru,[26] and northern Taupo Maori did not so much require

[21] Doc A71, Ibid 83
[22] Doc A71, Ibid p4
[23] Doc A71, Ibid 83
[24] Doc A71, Ibid p4
[25] Doc A71, Ibid p5
[26] Doc A71, Ibid p84

the protection of the Armed Constabulary as protection from the unruly, thieving, grog-selling troops.[27]

6.4.7 Local tribal committees, such as the Ngati Tuwharetoa tribal committee, found some favour as they strived to deal with the more destructive effects of the rapid social and economic change in which their peoples were embroiled.[28]

6.4.8 The committee also sought to find alternatives to Native Land Court title investigations to avoid the bitter disputes fostered in that forum.[29]

[27] Doc A71, Ibid p5
[28] Doc A71, Ibid p6
[29] Doc A71, Ibid p6

7.0 Native Land Court

7.1 Breach

7.1.1 In breach of Te Tiriti o Waitangi, and contrary to the its obligations of active protection and good faith, the Crown via the operation of the Native Land Court:

a. was significantly instrumental in dispossessing the peoples of Taupo of the lands required to meet the needs of their way of life;

b. denied the rights of Nga Hapu o Te Takere o nga Wai to continue holding their lands communally;

c. promoted and facilitated the assimilation of Maori into Pakeha customs and practices. [30]

d. subjected the peoples of Taupo to a legislative regime which aimed to assimilate Maori land tenure as closely as possible to British law and to promote the settlement of Te Takere o nga Wai, directing legislation towards the extinguishment of customary Maori tenure in the absence of any semblance of consultation with Maori.

7.1.2 The Crown, in breach of the principles of the Treaty, established the Native Land Court without any or any proper consultation with or input from Maori generally.[31]

7.2 Particulars

7.2.1 The Crown established the Native Land Court with the aim to replace customary land use with individual ownership. Title

[30] Williams "Te Kooti Tango Whenua: The Native Land Court 1864-1909" Doc A64, p124
[31] O'Malley "The Crown and Te Arawa c.1840-1910" Doc A49, p47

adjudication reduced tribal management over resources into ownership of individual interests, replacing fluid land use rights with fixed boundaries over the land.[32]

7.2.2 The individualisation of land resulted in the fragmentation of ownership, the unnecessary partition of land and prevented the traditional iwi or hapu system of land tenure and management. This typically resulted in uneconomic land holdings which were either impractical to develop or which were ultimately alienated.

7.2.3 The Crown coerced the Native Land Court into Taupo, preying upon the poverty of the peoples there to gain their acceptance to it.

7.2.4 The destruction and loss of life wrought by the campaign against Te Kooti left many Taupo and Kaingaroa Maori impoverished and homeless, with crops destroyed or neglected during the absence of the people.[33]

7.2.5 The loss of rental and trade income when the settlers abandoned their farms (some of which were also destroyed) further aggravated this position.[34]

7.2.6 The harm caused by the arrival of the Armed Constabulary, and the debilitating and demoralising effects of road work through the early 1870s were no kind of peace dividend.[35]

7.2.7 Allocating land to settlers created disputes surrounding who had the right to allocate what land, and who had to collect and distribute the rent for it.[36]

7.2.8 The Native Land Court process effectively forced Taupo Maori to participate or risk the loss of their lands and, in practice, any

[32] Rose "The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century" Doc A70, p67
[33] Stirling "Taupo-Kaingaroa Nineteenth Century Overview" Doc A71, p247
[34] Doc A71, Ibid p247
[35] Doc A71, Ibid p247
[36] Doc A71, Ibid p8

legislative safeguards against false or exaggerated applications were ignored. Chief Judge Fenton stuck to the principle that only evidence presented in court would be taken into account in Court sittings that were not always adequately advertised.[37]

7.2.9 There were occasions where Maori were not notified of hearings and suffered prejudice as a result. The hearings relating to Taupo lands were held in locations highly inconvenient to Taupo Maori

7.2.10 The Native Land Court process placed an unfair financial burden upon Taupo Maori in terms of Court and other related costs and survey fees

7.2.11 There were occasions when the Court failed to follow due legal process to the prejudice of Maori and where the Crown failed to remedy or adequately remedy that prejudice

7.2.12 Though the hapu of the area were able to resolve such matters among themselves, the settlers pushed for the security of a Native Land Court title. [38]

7.2.13 With no other means of providing such security of tenure and still unaware of the impact the Native Land Court was to have on them, the Maori landlords accepted the court. [39]

7.2.14 The Native Land Court's regime failed to reflect or acknowledge tikanga Maori and led to a rapid increase in the numbers of owners on titles, rendering land interests uneconomic, increasingly fragmented, and essentially illusory

7.2.15 The resulting fragmentation process effectively destroyed the ability of rangatira to develop the land in a communal way according to collective interests. In the process, chiefly authority was fundamentally undermined.

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[37] Whakarewarewa Forest Trust Research Team, p30
[38] Stirling "Taupo-Kaingaroa Nineteenth Century Overview" Doc A71, p8
[39] Doc A71, Ibid p8

7.2.16 The Crown continued to operate such Court despite the protests of Maori in general and despite the appeals and petitions of esteemed rangatira of Taupo as to the inherent unfairness within the system.

7.2.17 The impact of such large-scale alienations left the peoples of Taupo and their constituent whanau and hapu virtually landless and without the means to sustain their peoples.

7.2.18 The Crown via the operations of the Native Land Court had the affect of eroding the communal lifestyle of Te Takere o nga Wai, accompanied by the social disintegration of their prized institutions of whanau and hapu the effects of which are still being endured.

7.2.19 Through the Native Land Acts the Crown introduced a system of land ownership and title allocation designed to defeat traditional whanau, hapu and iwi based systems of land tenure.[40]

7.2.20 The Crown undermined the economic position of the peoples of Taupo and then with great prejudice exploited this impoverishment to its advantage to buy as much Maori land as it could at as a low a price as it could.

Impacts of Native Land Court

7.3 Breach

7.3.1 In breach of the principles of the Treaty, and contrary to the cultural integrity and rangatiratanga of the peoples of Taupo, the Crown established the Native Land Court, and in doing so:

a. failed to protect the Taupo peoples' tribal possession of their lands that passed through the Native Land Court

b. converted the customary title and tenure of the Taupo peoples into individualised holdings, which was a departure

[40] Hearn "Taupo-Kaingaroa Twentieth Century Overview Land Alienation and Land Administration 1900-1993" Doc A68, p267

from custom and destabilised the rangatiratanga of the hapu as a whole [41]

c. destabilised and/or destroyed traditional hapu-based systems of land tenure including land rights, use, occupation and control defeating chiefly and tribal authority and Tino Rangatiratanga.

d. fostered indebtedness and impoverishment, most often to be repaid in land, arising out of substantial court costs and associated costs such as interpreters and legal fees, and food supplies, and accommodation costs.

7.4 Particulars

7.4.1 The primary thrust of Native Land Court system aimed to facilitate the permanent alienation of Maori land. [42]

7.4.2 The various Native Land Court Acts allowed for the making of title investigation applications by individuals with or without hapu sanction and awarded title to specified individuals who would be free to sell their interest to settlers. [43]

7.4.3 Though the Native Land Court only sat briefly at Tapuaeharuru once from 1873 to 1879, the absence of the court did not prevent it from impacting on Taupo Maori as hearings involving their lands were heard elsewhere and they were forced to travel.[44]

7.4.4 The costs of protracted sittings at distant locations at inconvenient and inopportune times combined with survey costs to leave Maori

[41] Rose "The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century" Doc A70, p16
[42] Rose "The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century" Doc A70, p68
[43] O'Malley "The Crown and Te Arawa c.1840-1910" Doc A49, p44
[44] Stirling "Taupo-Kaingaroa Nineteenth Century Overview" Doc A71, p6

land owners vulnerable to the advances proffered by the government to pay for food.[45]

7.4.5 The 1878 Native Land Court sitting at Matata was took place on top of the starvation already being faced by Taupo Maori. Hunger and illness prevailed at Matata during a mid-winter influenza epidemic.[46]

7.4.6 These circumstances were typical of the impacts faced by Maori who were forced to participate within the Native Land Court processes and were well-known to the government.[47]

7.4.7 Mitchell and Davis took the opportunity to run up hundreds of pounds of advances against Paeroa East, Kaingaroa No. 1 and Kaingaroa No. 2 to enable the owners to obtain the food and shelter they needed while the court dragged on for months.[48]

7.4.8 Vast tracts of land were thus sold at prices that averaged about one shilling six pence per acre. Private competition continued to be retarded by fresh legislation, including the Thermal Springs Districts Act 1881, that privileged the government's purchase programme.[49]

7.4.9 The impact of the 10 owner rule on ownership, the failure of the Court's findings to reflect customary ownership, the costs of the Court process, debts, mortgages, and dealings with individual grantees created land loss amongst those iwi suffering exposure to the Court.[50]

7.4.10 Taupo Maori supported strategies such as the Repudiation Movement which sought to challenge the legal validity of many dubious transactions involving Native Land Court titles, lobbying for

[45] Doc A71, Ibid p6
[46] Doc A71, Ibid p255
[47] Doc A71, Ibid p256
[48] Doc A71, Ibid p255
[49] Doc A71, Ibid p7
[50] Doc A71, Ibid p155

changes to the Native Land Acts, fairer Maori political representation, and an appropriate role for rangatira in the administration of Maori matters[51]

7.4.11 The government's failure to fully inquire into the grievances of the Repudiation movement led to pan-tribal petitions which were in general ignored by the government.[52]

7.4.12 The government, who did not like such issues being raised, failed to protect Taupo Maori from tactics of the predatory Hawke's Bay horde had worked their way inland, ignoring complaints from rangatira that they were "killing the land".[53]

7.4.13 Taupo Maori increasingly sought political self representation and internal jural control, continuing to turn to local runanga, which had acted to settle land disputes in the days before war-related tensions and the Native Land Court undermined this institution to resolve their land and social disputes.[54]

7.4.14 There was considerable support for the Putaiki around northern Taupo region.

[51] Doc A71, Ibid p155
[52] Doc A71, Ibid p159
[53] Doc A71, Ibid p160
[54] Doc A71, Ibid p156

8.0 Alienation of Lands

This section remains in draft to be completed upon the receipt of the Belgrave and McBurney and Walzl Reports

8.1 Breach

8.1.1 The Crown, in breach of the principles of the Treaty, and in particular its obligation to protect the lands and rangatiratanga o nga tupuna o Te Takere o Nga Wai, pursued policies and practices specifically designed to undermine tribal and chiefly authority, and Maori customary law, in order to facilitate Crown acquisition of tribal lands.

Leasing, Purchasing and Monopolies

8.2 Breach

8.2.1 The Crown, in breach of the principles of the Treaty, and in particular its obligation to protect Maori land resources and rangatiratanga, pursued policies and practices specifically designed to undermine tribal and chiefly authority, and Maori customary law, over their lands in order to facilitate surreptitious Crown acquisition of tribal lands.

8.2.2 In breach of its duty to actively protect Maori in possession of their lands and dominions the Crown undertook a systematic approach to impoverishing the peoples of Taupo in order to create conditions that would coerce them into surrendering their lands to the Crown.

8.2.3 The Crown, in breach of its obligations of good faith, treated those prejudiced by its actions unequally, compensating pakeha while refusing to do so for Maori.

8.2.4 In breach of Te Tiriti the government facilitated the conversion of resources held by Maori into private wealth to facilitate the economic growth of the settler society. To progress settler society the Crown:

i. confiscated Maori land[55]

ii. transformed customary ownership into a form which facilitated transfer from aboriginal into settler ownership. [56]

8.3 Particulars

8.3.1 A desire of Central North Island Maori to control processes of settlement through their own tribal structures and a preference for leasing was characteristic from the 1850's.[57]

8.3.2 New roads opened up Taupo and Kaingaroa to renewed settlement, with an initial focus on the geothermal attractions, particularly those closest to Tapuaeharuru.[58]

8.3.3 They attracted speculators and hoteliers looking to develop hot springs for the tourist traffic, offering to lease large areas of land.[59]

8.3.4 The Crown suspended the Native Land Court to hinder private competition preventing leases from being legally completed, thereby allowing the government to refuse to pay rents on its 'leases' for many years. [60]

8.3.5 The government moved during 1873 to secure its intended great estate in the Taupo and Kaingaroa districts, part of a wider strategy that also took in Rotorua and Bay of Plenty lands.[61]

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[55] Hearn "Taupo-Kaingaroa Twentieth Century Overview Land Alienation and Land Administration 1900-1993" Doc A68, p562
[56] Doc A68, Ibid p562
[57] Armstrong "Ika Whenua and the Crown ca.1865-1890" Doc A33, p56
[58] Stirling "Taupo-Kaingaroa Nineteenth Century Overview" Doc A71, p6
[59] Doc A71, Ibid p6
[60] Doc A71, Ibid p6
[61] Doc A71, Ibid p287

8.3.6 The Crown, in pursuit of these crucial objectives, subsequently began entering into leasing arrangements itself, taking over other existing leases, buying out the private parties, and hiring the same land purchase agents to promote its own agenda. [62]

8.3.7 Taupo Maori who had been advised by Governor Grey himself to lease their lands had indicated an early preference for this form of land alienation from 1866 onwards, as it maintained their ownership and held out the prospect of an ongoing relationship with their tenants[63]

8.3.8 In 1875, the Crown purchase officers Mitchell and Davis noted that "long before the origin of the famous land league of the Waikatos" the Arawa tribes had come to the "unanimous" decision that no lands would be alienated other than by lease.[64]

8.3.9 The government paid lip service to this preference, offering leases while pursuing purchases. [65]

8.3.10 The government's land purchase agents were instructed that the object of their "mission," was, "the acquisition of as much territory as the natives can dispose of without injury to themselves." and it was believed that it would not prove difficult to buy half-a-million acres in the Taupo district alone.[66]

8.3.11 The Crown embarked upon a strategy of leasing which was designed to tie up the vast tracts of Taupo and Kaingaroa lands in nominal leases until such time as a purchase might be affected.[67]

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[62] Doc A71, Ibid p6
[63] Doc A71, Ibid p288
[64] Armstrong "Ika Whenua and the Crown ca.1865-1890" Doc A33, p56
[65] Stirling "Taupo-Kaingaroa Nineteenth Century Overview" Doc A71, p288
[66] Doc A71, Ibid p287
[67] Doc A71, Ibid p6

8.3.12 The government instructed that land be tied up in leases, notably "long leases of from 21 to 90 or 999 years, with a purchasing clause," particularly where Maori were opposed to "actual sale."[68]

8.3.13 The clause specifically prohibiting any other dealing in the land without the Governor's assent was inserted in the lease agreements, and on the strength of these leases the blocks were also proclaimed as "under negotiation" by the Crown, thus barring any private dealings. That leasing was indeed little more than a means to an end was openly admitted by the Crown land purchase agents Mitchell and Davis in 1873. They remarked that it had been expedient to:

> *"exercise some caution in introducing the question of purchase, and we have mainly confined our proposals to the leasing of country... The lease of these lands to the Government will we consider render [purchase] hereafter... comparatively easy, inasmuch as time and opportunity will thereby be afforded for the final adjustment of tribal or hapu claims... while the alienation [restriction] clauses inserted in all the leases, together with the political and commercial relations arising out of these transactions, will... place the Government in a position to accomplish with comparative ease, whatever ends of public moment it may have in view relative to these waste lands".*[69]

8.3.14 The means by which the Crown sought to achieve "the ends of public moment" were not lost on Maori. As the Te Arawa chief Te Rangikaheke stated in 1874, "the lease is the bait, the hook is the purchase".[70]

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[68] Doc A71, Ibid p287
[69] Armstrong "Ika Whenua and the Crown ca.1865-1890" Doc A33, pp71 and 73
[70] Doc A33, Ibid p72

8.3.15 Pakeha settlers also anticipated turning leases into freehold as soon as possible. In 1875 The *Hawkes Bay Herald* commented favourably on the Crown's lease of the Kaingaroa plains. "*Steadily but surely*", it was noted:

> *"the advance of the Pakeha is being made into the interior of the North Island... there is every reason to believe the ere long the Government will obtain all the land they require in this part of the country... Before many years are over, the lands of His Majesty in the upper Waikato will, no doubt, fall into the hands of the European".*[71]

8.3.16 In the following year the *Bay of Plenty Times* similarly remarked that while leases were not entirely satisfactory:

> *"under the circumstances of so much innate hostility, so long and strenuously shown by these natives to parting with their lands in fee simple, and keeping in view the probability of effecting the extinguishment of native title during the term of these long leases, we have confidence in this mode of dealing with the Arawa lands, and in ensuring thereby, both a political and commercial success. The political importance to the North Island, and the colony, of our securing these vast areas of lands, comprising the volcanic plateau of Taupo and Kaingaroa to the coast, cannot be overestimated. Their extent and geographical position alone, forming as it were a huge wedge of territory - its base resting on the shores of the Bay of Plenty, and its apex protruding far into the King Country... renders its possession and control, by a civilised government, a matter of great national significance...".*[72]

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[71] Doc A33, Ibid p72
[72] Doc A33, Ibid p73

8.3.17 Crown purchase officers advanced money to anyone who would take it regardless of their customary position of authority.[73] in defiance of those seeking to maintain some measure of tribal control over their lands, was one which created serious divisions within the Te Arawa society. [74]

8.3.18 The purchase agents, including Davis and Mitchell, were employed on a commission basis. The more land sold meant the greater the commission payable by the Crown to the agent. This encouraged Land Purchase Agents to obtain as much land as possible and to deal with individuals as against the tribe.[75]

8.3.19 The advance rents proffered by the government's land purchase agents were subsequently transformed into purchase payments, and by the late 1870s large areas of land were committed to sale to the government.[76]

8.3.20 The renewal of Native Land Court sittings following its suspension gave new impetus to settlers and private speculators seeking to pick up the leasehold titles abandoned in 1869, as well as take up leases of land not yet put through the court.[77]

8.3.21 Government control of when the Native Land Court could sit was used as a tool in Taupo, as the government's leases contained a clause allowing it to withhold payment of rent until title was perfected through the Court. [78]

8.3.22 As the government itself controlled when the court could sit, the owners were unable to complete their titles until the government deemed it fit. They were thus unable to receive rental income and

[73] McBurney "Ngati Manawa & the Crown Part One: 1840-1927" Doc A37, p147
[74] O'Malley "The Crown and Te Arawa c.1840-1910" Doc A49, pp85-86
[75] Doc A49, Ibid pp76-78
[76] Stirling "Taupo-Kaingaroa Nineteenth Century Overview" Doc A71, p6
[77] Doc A71, Ibid 165
[78] Doc A71, Ibid p6

were reliant on advances from the government, advances that were then charged against not the lease, but the purchase, of the land. [79]

8.3.23 The exclusion of the Native Land Court therefore amounted to the exclusion of private competition, as private parties could not deal with land that had not passed the court. [80]

8.3.24 The government then ensured this virtual monopoly through the Government Native Land Purchases Act 1877 by granting itself the additional statutory right to exclude private competition from any land for which it had entered negotiations.[81]

8.3.25 Section 2 of the Native Land Purchases Act 1877 allowed the Governor to proclaim a district were private parties and were forbidden from land sales negotiations. Section 42 of the Immigration and Public Works Act Amendment Act 1871 allowed Crown agents to negotiate valid purchases of lands prior to an award of the Court where these were specifically required for the purposes of gold mining, special settlements or railways. These provisions were used in combination with powers granted to the government under the Native Lands Acts of 1867 and 1873 to suspend the operation of the Native Land Court in any district in order to advance sums on a considerable area of land. At the same time this practice prevented private parties from completing any transactions. [82]

8.3.26 These powers amounted to the re-imposition of pre-emption across an extensive district. This arsenal of weapons was used to full effect against Taupo Maori, and proved to be rather effective "weapons of conquest".[83]

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[79] Doc A71, Ibid 288
[80] Doc A71, Ibid 289
[81] Doc A71, Ibid 289
[82] O'Malley "The Crown and Te Arawa c.1840-1910" Doc A49, p61
[83] Stirling "Taupo-Kaingaroa Nineteenth Century Overview" Doc A71, p289

8.3.27 Pakeha who were prejudiced by the government's monopolistic greed were compensated while Maori losses were ignored.[84]

8.3.28 The use of alcohol to facilitate land dealings was common place and ignored by Crown agents.[85]

8.3.29 The Crown exploited the economic vulnerability of Maori and payment of Tamana, an *"established pressure tactic, an unfair practice designed to purchase lands as quickly and cheaply as possible"*,[86] was used strategically to separate Maori from their land:

a) Though advance payments were considered *"absolutely void"* or unenforceable in law when made by private parties, crown agents usually sought to entice as many of the owners as possible to accept a deposit on the land in cash, or arranged for supply of goods to be advanced. [87]

b) Payment for such advances would have to be either reimbursed to the government or deducted from an individual's share in a block once the land passed through the Court. [88]

c) Since few Maori had access to ready supply of cash, more often than not payment was made in land. [89]

d) Crown purchase officers advanced money to anyone who would take it regardless of their customary position of authority.[90]

e) The practise of government agents advancing payments to individuals and hapu who would accept them, in defiance of

[84] Doc A71, Ibid pp289-290
[85] Doc A71, Ibid p162
[86] Rose "The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century" Doc A70, p15
[87] O'Malley "The Crown and Te Arawa c.1840-1910" Doc A49, p61
[88] Doc A49, Ibid p61
[89] Doc A49, Ibid p61
[90] McBurney "Ngati Manawa & the Crown Part One: 1840-1927" Doc A37, p147

those seeking to maintain some measure of tribal control over their lands, was one which created serious divisions within the Maori society. [91]

f) The Crown was also quick to take advantage of opportunities such as political hui, tangi, or Native Land Court hearings, in their efforts to secure purchases, [92] and food shortages and indebtedness were often put forward as reasons for selling.[93]

8.3.30 By 1885, almost 300,000 acres of land in Taupo and Kaingaroa had been sold to the government at a cost of little more than £20,000. Up to half the purchase payments had gone before the purchases were finalised, consumed in advances, 'rents', and survey costs. [94]

8.3.31 When the Native Land Court returned to Taupo for larger sittings from 1880 onwards, so too did the private purchasers and big speculators, bringing with them the corrupt practices honed in other districts. [95]

8.3.32 In the five years up to 1885, private purchases acquired just a little less land than the government had in the period from 1870–1885 for the same low prices; 287,000 acres at a cost of about £22,000. [96]

8.3.33 By 1900, Maori, who were living in wretched conditions had made their position clear:[97]

a. the purchasing of Maori land should cease;

b. leasing could continue;

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[91] O'Malley "The Crown and Te Arawa c.1840-1910" Doc A49, pp85-86
[92] Rose "The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century" Doc A70, p35
[93] Doc A70, Ibid pp119-124
[94] Stirling "Taupo-Kaingaroa Nineteenth Century Overview" Doc A71, p7
[95] Doc A71, Ibid p7
[96] Doc A71, Ibid p7
[97] Hearn "Taupo-Kaingaroa Twentieth Century Overview Land Alienation and Land Administration 1900-1993" Doc A68, p551

c. title problems should be addressed; and

d. Maori should have access to capital and technical assistance to help them farm their remaining lands.

8.3.34 The regulatory environment in respect of Maori freehold land established by the Native Land Act 1909 and the Native Land Amendment Act 1913 was explicitly designed to facilitate and expedite redistribution, not among Maori but between Maori and settlers.[98]

8.3.35 The Crown's administration of Maori land was encroached upon, compromised, and undermined the rights of Maori owners to use, manage, and dispose of their land and of their interests in land in a manner which would have been unacceptable to most other owners of land.[99]

The Inhibition of Development.

8.4 Breach

8.4.1 In breach of the its ongoing obligations to actively protect the economic position of Maori and their ability to sustain their existence and their ways of life, the Crown:

a) Constricted the ability of the Taupo peoples to develop and maintain their resources in their own possession;

b) Utilised the impoverishment caused by the peoples lack of ability to develop to further obtain land from the peoples of Taupo

8.5 Particulars

8.5.1 Maori within the Taupo and Kaingaroa were seeking to utilise their lands and resources, to participate directly in the commercial

[98] Doc A68, Ibid p553
[99] Doc A68, Ibid p553

economy, and to improve their economic and social circumstances.[100]

8.5.2 Such efforts were founded on Taupo Maori retaining some form of collective control of their lands and resources and hence were in conflict with the economic and social norms of a rapidly growing, increasingly confident, and increasingly prosperous economy founded on private property and private property rights, and a belief in the ability of the 'market' to allocate scarce resources, secure their efficient use, and generate continuing growth.[101]

8.5.3 Maori efforts towards economic development which would ensure that they maintained and improved their rich resource base were pushed aside by the Crown who continued to favour large scale land alienation.[102]

8.5.4 Maori, however, were forced to sell their land against the wishes of their hapu:

a) to meet immediate subsistence needs;

b) to provide for housing;

c) to support the education of children;

d) to meet medical expenses;

e) to meet ceremonial and consumptive costs.

8.5.5 At the heart such decisions to sell lay the central fact that for most Maori, well into the twentieth century, land represented their sole capital and the major if not only means of generating income for the development of their remaining lands and resources.[103]

[100] Doc A68, Ibid p551
[101] Doc A68, Ibid p552
[102] Doc A68, Ibid p553
[103] Doc A68, Ibid p552

8.5.6 The Crown's desire to acquire land had less to do with enabling Maori to acquire capital for re-investment in land and resource development than it had with 'bettering' its own investment in public works and ensuring that it acquired the 'unearned increment.'[104]

[104] Doc A68, Ibid p554

9.0 Land Taken for Public Purposes

9.1 Colonial development required the transformation of most of New Zealand's forested wilderness into pasture, a transformation that would realize the twin aims of advancing the economic fortunes of the colony, as well as civilizing what was seen as a barbaric landscape, was used as a justification for the creation of scenic reserves which was a reaction to the environmental destruction, as legislators sought to preserve the last vestiges of forest wilderness for posterity.

9.2 The Crown's appropriation of the last areas of wilderness was a continuation of a colonial agenda which was achieved by:

9.2.1 wrestling ownership and control of those wilderness areas that were still in Māori ownership through the use of public works land taking legislation.

9.2.2 Imposing European discourse over pre-existing Māori narratives by way of scenery, and natural resource preservation legislation to facilitate the displacement of Māori in the landscape.

9.2.3 wresting and taking over ownership and control of the burgeoning industries previously controlled by Māori in the Central North Island districts such as tourism through scenery preservation and resource management legislation.

10.0 Scenic Preservation

As I listened to evidence of Government and local authority witnesses and the logical presentation of argument which all led somehow to the Māori owners losing land for the most admirable reasons – but still losing it – I had the feeling that somehow I had heard it all before.[105]

10.1 Breach

10.1.1 In breach of Te Tiriti o Waitangi, the Crown, introduced and then used the power to take lands to enable the acquisition of scenic sites, against the wishes of the owners.

10.1.2 In breach of the obligation to actively protect Maori in their possession of their taonga, and contrary responsibilities to act in good faith, the Crown acted unconscionably and eroded the tino rangatiratanga of the claimants by creating conditions of oppression by:

a) using threats of compulsory acquisition; and

b) actively disregarding promises made by the Crown; and then

c) playing on the Maori fear of vast land loss to force Maori into '*gifting* land', including wahi tapu, to the Crown as scenic reserves.

10.1.3 In forcing Maori to accede to the imposition of scenic reserves, the Crown breached their obligation to actively protect the claimants taonga and waahi tapu.

10.1.4 Contrary to their obligation to protect tangata whenua tino rangatiratanga, the Crown consistently denigrated the Maori ethics

[105] The evidence of Harry D. B. Dansey to the Royal Commission to Inquire into the Future Use of

of kaitiakitanga and manaakitanga, undermining tangata whenua rangatiratanga as their attempts and requests to administer their turangawaewae were ignored and belittled.

10.1.5 The Crowns racist and discriminatory action towards Maori who were treated more harshly than their pakeha counterparts who interfered with the reserves shows a significant breach of Crown obligations to act with utmost good faith toward Maori.

10.2 Particulars

10.2.1 The Crown's assumption of ownership and care of special places on behalf of all New Zealanders assumed that Māori were not capable of carrying out such a stewardship role, despite the fact that kaitiakitanga has been and remains a fundamental kaupapa of tikanga Māori.

10.2.2 The provisions of the Scenery Preservation were used in a discriminatory fashion and those pakeha who held interests in the land became largely exempt from them as they were used oppressively against Maori.

10.2.3 The Crown set about the establishment of committees and mechanisms to identify and then empower the Crown to compulsorily acquire and alienate Maori Land.

10.2.4 The government valued land that it desired to acquire at rates significantly below market rates.

10.2.5 Once the area had been roughly identified, alienation other than to the Crown was prohibited and development constricted as crown officials discussed the matters with the Maori owners who would be made aware of the Crown's powers of compulsory acquisition.

10.2.6 Restrictions on land development were used to ensure that the value of the land remained minimal.

Rangatira B and C Blocks, 1974, p. 3. cited in McBurney 290.

10.2.7 The restrictions and the threat of large scale land alienation set the scene for coercive negotiations that were entered into between the Crown and Tangata Whenua as the identification of possible reserve areas was further refined.

10.2.8 Notwithstanding the initial opposition by Maori to the inclusion of their sacred places in the scenic reserves, they were persuaded that it was only by incorporating wāhi tapu into the reserves that their protection could be guaranteed.

10.2.9 Once the gift of the reserves had been made the Crown adopted the misleading position that it had been an independent action on the part of tangata whenua, spurred by generosity and public spirit.

10.2.10 Tangata Whenua were forced to waive the paltry compensation that the Government would offer to ensure their connections to their whenua was maintained and that Europeans would not be appointed to manage their special places.

10.2.11 The Crown promised that following the gifting, they would not seek to take any more land for scenic purposes. This solemn promise was soon broken, when land set aside for a Township that was never built at the eastern end of Lake Rotoiti, was converted to an additional scenic reserve, rather than being returned to the owners.

10.2.12 The Crown then hampered Scenic Boards, frustrating their attempts to care for and maintain the reserved lands.

10.2.13 The Crown then eroded the authority of these Boards eventually completely usurping their authority and rendering them irrelevant.

10.2.14 The Crown treated tangata whenua prejudicially with regards to their presence and activities around the scenic reserves.

10.3 Recommending Alienation – Ascertaining Colonial Intention

10.3.1 The 1903 Scenery Preservation Act allowed for the allowed for the taking of land under the Public Works Act.

10.3.2 Such takings were in all but one respect similar to other takings under Public Works Act. In the case of takings for scenic purposes, the Crown imposed the added restriction that any compensation monies had to be paid to the Public Trustee and held in trust as an investment, rather than being distributed among the owners.[106]

10.3.3 The Scenery Preservation Commission was established under the Scenery Preservation Act 1903.

10.3.4 The Commission was specifically authorized to look at and recommend the reservation (and therefore acquisition by the Crown) of Māori-owned land for its scenic, thermal or historic properties. [107]

10.3.5 Although the Commission was not empowered to take Māori land under the Acts of 1903 and 1906, it still took an inventory of land in Māori ownership that it judged suitable for reserving for scenic purposes. [108]

10.3.6 In its first year of existence, the Commission recommended the acquisition of a total of 180,558 acres, all in Auckland Province and chiefly in the Whangarei and Rotorua districts. [109]

10.3.7 The Commission also identified a series of blocks still in Māori ownership that should also be acquired for the purposes, including:

a) **Waikakarapiti Forest, Rotoma**. The Commission recommended that about 795 acres of Section 39A, Blocks XI, XII, XV, XVI, Rotoma S. D., through which the Rotorua-Whakatāne Road runs, be acquired from the Māori owners. Scenery preservation takings completed in the vicinity of Lake Rotoma included parts of the Taumanu, Waitangi and Rotoma blocks in 1910 and 1911.

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[106] Mc Burney 41.
[107] McBurney pp 50, 62.
[108] McBurney 50
[109] McBurney 50

b) **Tamure-nui Lake**. The Commissioners recommended that about 35 acres around the shores of Lake Tamure-nui, comprising a strip about 5 chains wide, forming part of Block V, Rotoma S. D., and close to the Rotorua – Whakatāne Road.[110]

10.3.8 In 1906, the Scenery Preservation Committee was dissolved. As part of the hand-over of responsibility for scenic reserves from the Tourist Department to the Lands Department, a report was drafted indicating what had become of the recommendations made over the previous two years by the Commissioners. The report's conclusions relating to land in the Rotorua/Taupo Districts are summarised as follows:[111]

Block	Area	Owner	Status
Ngongotaha Mountain	480 acres	Māori	Approved - Urgent
Okoheriki & Whaiti-Kuranui- Land beside Rotorua Railway	3,428 acres	Māori	Approved estimated cost: £9,000
Land around Lake Okareka (Run 77)	6,400 acres	Crown Lease	Not Approved
Rotomahana-Parekarangi Rotorua-Wairoa Road	358 acres & 250 acres	Māori	Approved
Lake Taupo Shore	160 acres	Crown	Proclaimed Gazette No. 17 1/3/06
Waikato River Banks	600 acres	Crown	Proclaimed Gazette No. 95 2/11/05

10.3.9 On 9 April 1906, a draft of an advertisement to be inserted in regional newspapers notifying the public of the regulations governing scenic reserves. After citing the relevant legislation and the date that the land was gazetted a scenic reserve, the notice stated:[112]

[110] McBurney 58.
[111] McBurney 60.
[112] McBurney 60.

Every person who after this notification cuts or removes timber or in any way interferes with the said Reserve, or damages the scenic features thereof, is liable to a fine not exceeding one hundred pounds

10.4 Proclaiming the World and Alienating Aspiration

10.4.1 Following the dissolution of the Scenery Preservation Commission, a Scenery Preservation Board was set up in 1906-1907. This was administered by the Lands Department.[113]

10.4.2 By 1941, however, the Scenery Preservation Board was disbanded which delayed the establishment of a sustainable reserves administration to cope with the extensive nationwide network that had been created. [114]

10.4.3 From 1941, the Department of Lands and Survey took over the functions previously carried out by the Scenery Preservation Board with respect to most scenic reserves. [115]

10.4.4 In 1953, the Reserves and Domains Act amalgamated town domain and scenic reserve legislation, which gave new emphasis to protecting reserved areas in their natural state, combined with eradication programmes targeting introduced plants and animals. [116]

10.4.5 The ability Māori to take or kill birds or to bury their dead within any scenic reserve which before the reservation was Maori land, were placed at the discretion of the Minister. [117]

10.4.6 The enactment of the Reserves and Domains Amendment Act 1960, which provided for the Minister of Lands to "appoint the National

[113] McBurney 195
[114] McBurney 195
[115] McBurney 195
[116] McBurney 195
[117] McBurney 195

Parks Authority, a Committee to which he could delegate such powers and functions under the Act as he thought fit, gave the National Parks Authority the general oversight and control of Scenic Reserves. [118]

10.4.7 During this time, the department of Lands and Survey set about redefining Crown policy as to what a Scenic reserve was. Maori input in this redefinition was notably absent as their rights and obligations of kaitiakitanga were essentially ignored.[119]

10.5 The Nationalisation of Lake Taupo

10.5.1 By the mid-1920s, the Crown had already acquired a significant interest in Lake Taupo and the surrounding lands. [120]

10.5.2 Notwithstanding this, the Government became concerned that Māori might sell parts of the lakeshore to foreigners, who were understood to be prepared to pay handsomely for lakeside property. [121]

10.5.3 In 1924, the Government signalled its intention to nationalize the bed and foreshore of Lake Taupo, and enacted the Native Land Amendment and Native Land Claims Adjustment Act 1924 which empowered the Government to commence negotiations with Tūwharetoa over land surrounding Lake Taupo, to ensure that the people of New Zealand would not be denied access to some of the best fishing-grounds bordering on Lake Taupo. [122]

10.5.4 The enactment gave the Government and those interested in these waters an opportunity of arriving at some arrangement which would give the people not only of New Zealand, but from overseas, a chance of equal access to the fishing. [123]

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[118] McBurney 195
[119] McBurney
[120] McBurney 214
[121] McBurney 214
[122] McBurney 214
[123] McBurney 214

10.5.5 After two years of negotiations, an agreement was reached with the Tuwharetoa Tribe of Tokaanu, which was formalised by the Native Land Amendment and Native Land Claims Adjustment Act, 1926.[124]

10.5.6 The agreement essentially vested the bed of the lake and all contributing rivers together with a chain strip of the land surrounding the lake in the Crown for £3000 per annum which was to be distributed by the Tuwharetoa Trust Board which also saw its genesis in this agreement.

10.5.7 This agreement which saw the virtual alienation of the lakebed, did not take into consideration that more that one iwi had interests in the Lake.

10.5.8 The Trust Board and a number of prominent members of the Tuwharetoa tribe outlined a number of special places which were to be reserved to the native owners against interference by the fishing and other regulations.[125]

10.5.9 The Crown, however, put pressure on Tūwharetoa to give up the lake bed and foreshore, and once title was obtained the Crown assumed full jurisdiction over these places.[126]

10.6 Taupo Basin Reserves Scheme

10.6.1 On 18 February 1965 an inaugural meeting of the "Officials Committee on Lake Taupo Reserves" was held at the Board Room of the New Zealand Forest Service to "consider submissions by the Taupo County Council for the establishment of reserves along various parts of the shores of Lake Taupo, and extending up some of the more important tributary streams.[127]

[124] McBurney 214
[125] McBurney 221
[126] McBurney 221
[127] McBurney 224.

10.6.2 The Committee was chaired by P. J. O'Dea of Internal Affairs, and included other members of that department, members of New Zealand Forest Service, as well as members of the Electricity, Māori Affairs, Treasury, Lands and Survey, Tourist and Publicity, Marine and Works Departments. [128]

10.6.3 Notably absent from the decision making and policy shaping were local Māori who were not represented on the Committee which was limited to "officials" only.[129]

10.6.4 Tūwharetoa met at Taupo with the Pritchard-Waetford Committee of Inquiry charged with investigating Māori land use. One of the main topics of discussion was the Taupo County Council's plans for reserving land around Lake Taupo. [130]

10.6.5 The Tūwharetoa representatives submitted to the Committee that the government should set aside areas of Crown land in exchange for areas of Māori land that were to be used for reserves. [131]

10.6.6 By the following September 1965, the Rotorua-based Taupo reserves working committee was ready to convene a meeting with interested parties who were invited to put forward their views on the locations that should be made into reserves. The Parties included:

a) The Taumarunui County Council

b) The Taupo County Council

c) The Internal Affairs Department

d) The Health Department

e) The Conservator of Forests

[128] McBurney 224.
[129] McBurney 224.
[130] McBurney 232.
[131] McBurney 232.

f) The D.S.I.R. (Department of Scientific and Industrial Research)

g) The Waikato Valley Authority

h) The New Zealand Historic Places Trust

i) The Federation of Anglers Associations.

10.6.7 Not included in the impressive list of invited interested parties were local Maori landowners whose opinions were obviously not required as the intimate connections that Māori had with the land stretching back centuries was not considered relevant to the work of the Committee[132].

10.6.8 .In 1966, the Council and local media were emphasizing the necessity of Scenic Reserves as: [133].

a) Shorelines and stream beds had begun to deteriorate;

b) Huge areas of natural cover had been stripped from the lake's catchment.

c) Reserves that had been set aside for the benefit and enjoyment of the public had been converted to grassland. "

d) Tons of fertiliser, weed-killer and poisons had been spread along the lake's shores each year, bringing about unnatural changes in the cycle of underwater growth.;

e) The ugly scars of erosion have begun to deface the once-beautiful valleys covered with nature's greens and golds

10.6.9 The Cabinet sub-Committee received the report of the Officials Committee in early 1966. Because the key purpose of the scheme was the preservation of the water quality of the lake, the Committee recommended a number of steps to ensure this was achieved. These

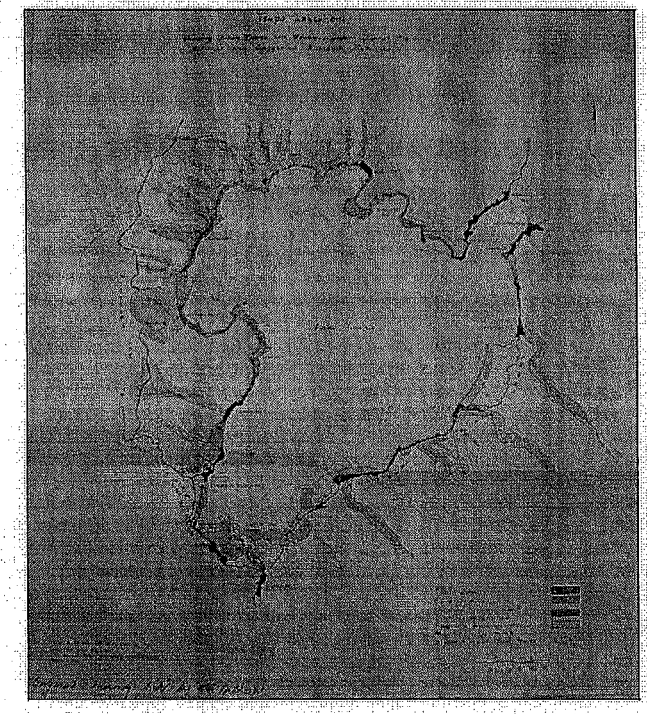
[132] McBurney, 233.
[133] McBurney, 234.

included extending the powers of the Pollution Advisory Council to control the discharge of nutrients into watercourses and lakes; possibly extending to Lake Taupo a research project currently being carried out into weed growth at Lake Rotorua and the Waikato hydro lakes; assisting the research of the Agricultural Chemicals Board and other organisations investigating the effect of chemicals and fertilisers on water purity and associated matters; and prohibiting the discharge of noxious and/or nutrient industrial waste into the watershed.[134]

10.6.10 The Committee recommended that 38,000 acres be reserved and a plan was produced showing the areas to be reserved under the District Scheme in red, and those to be included in the National Scheme in green. The red areas were generally located on the western and north-western shores of the lake, while the green areas were generally located around the many streams feeding into the lake and their catchments. Once again, the western and northwestern shores predominated in the lands that would be taken.[135]

[134] McBurney 235.
[135] McBurney 236

Figure 1 Map of Lake Taupo showing Forest Service proposals for land use



Key: Indigo = Urban areas; Blue = Existing reserves; Red = Proposed reserves under district scheme; Green = Suggested National schemes.

10.6.11 The Committee recommended that the scheme needed to be overseen by Government from the design stage through to its implementation and on-going management. [136]

10.6.12 The Committee also recommended that land acquired under the guise of scenic reserves could in the future be subdivided and sold or made available for urban development.[137]

10.6.13 Given that Maori were to provide 58% of the land for the reserves, or 90% of the non-crown-owned land, [138] it is astounding that they had been essentially ignored in this process and had not been invited as interested parties during the policy development upon which the recommendations were founded.

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[136] McBurney 236
[137] McBurney 237-239
[138] McBurney -239

10.6.14 This perception is exacerbated in light of the recognition of the fact that the success of the scheme would largely depend on the co-operation of the Māori owners,[139]

10.6.15 Essentially, the Committee's recommendations were tailored to address the twin problems of environmental damage caused by erosion and the discharge of pollutants into the Taupo Basin catchment, and ultimately into the lake itself; and the large areas of undeveloped land, mostly in Māori ownership, that, it was thought, were unlikely to be brought into efficient production in the foreseeable future. Both of these problems had their roots in historical actions or omissions by the Crown.. [140]

10.6.16 Māori who were being asked to sacrifice their ancestral land to fix these Crown catalysed problems. [141]

10.6.17 The Taupo Basin reserves scheme, to include 22,000 acres of Māori land was essentially a compulsory acquisition of that land by the Crown. [142]

10.6.18 When hui were held to discuss the proposals of the Committee, the threat of Crown compulsory acquisition hung in the air, and permeated the negotiations.[143]

10.6.19 In a briefing paper to cabinet it was noted with respect to Maori land that was to be reserved, that the usual method of negotiation with owners would be carried out with meetings of owners, submission to Māori Land Courts, but failing agreement, the compulsory acquisition of the land under the Public Works Act should be

[139] McBurney 237-239
[140] McBurney 240
[141] McBurney 240
[142] McBurney 240
[143] McBurney 243

undertaken after the consent of the territorial local authority has been obtained..[144]

10.6.20 In June 1967, the Council was the first instance where official recognition that Tuwharetoa should have an ongoing role in the administration of their turangawaewae recommending that a representative of the Tūwharetoa Trust Board or a representative of the Tribal Committees be appointed to the Co-ordinating Committee. [145]

10.6.21 Again interests other than those of Tuwharetoa continued to be invisibilised.

10.6.22 In August, it was reported that Tuwharetoa accepted the arrangement with the following conditions: [146]

a) Land was to be set aside as proper reserves for all time for the use of all people with proper roading;

b) suitable areas be earmarked for subdivisions.

c) The Trust Board expressed a preference for afforestation rather than land development for farming on both the eastern and western shores of the lake;

d) They also gave approval for the provision of a marina at Tokaanu,

10.6.23 Proposals that had originally been put forward as scenery preservation techniques rapidly took on the appearance of strategies focused more toward maximization of economic benefit as cautions of lake pollution were now dismissed as circumstantial.[147]

[144] McBurney 244
[145] McBurney 244
[146] McBurney 244
[147] McBurney 246

10.6.24 Distressed at the trends away from their submissions, the Forest Service called a meeting with a Representative Committee of Māori Owners, East Taupo Basin Lands to seek their support.[148]

10.6.25 The dissension within the Study Group resulted in the Cabinet committee rejecting its findings. [149]

10.6.26 In November 1968 the Officials Committee was alerted to the fact that a Maori Incorporation was clearing land for development in the Cherry Bay-Wharekaho Point, Whanganui region. [150] The incorporation intimated that the Crown could bring a halt to the development by leasing the land at £20 per acre per year. [151]

10.6.27 Cabinet had approved the setting up of a Co-ordinating Committee, upon which hopes were placed to halt the Incorporation. [152]

10.6.28 On 16 December 1968, the inaugural meeting of the Taupo Basin Co-ordinating Committee duly took place at Turangi. [153]

10.6.29 Over the next six months, two sub-committees set up to deal with particular issues met to discuss the means by which the reserves project could be made a reality. Despite the presence of Tūwharetoa Trust Board and Māori landowners on the Co-ordinating Committee, the make-up of the sub-committees was entirely Pākehā. One dealt with the question of road access to the reserves, while the other was simply entitled the River Reserves Sub-Committee [154]

10.6.30 Provision for the Māori land owners to have any input into either the strategic development, or the on-going management process itself was again neglected. [155]

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[148] McBurney 247
[149] McBurney 247
[150] McBurney 248
[151] McBurney 247
[152] McBurney 247
[153] McBurney 250-
[154] McBurney 251
[155] McBurney 253

10.6.31 Maori were coerced into participatory frameworks as they were told that this was the only way to ensure protection of their wahi tapu. [156]

10.6.32 Between 1971 and 1981, the Taupo Basin Reserves Scheme advanced incrementally, In the absence of the threat of compulsory acquisition under public works legislation for creating the reserves, the Crown and the Taupo County Council found a marked reluctance on the part of landowners to give up their land for the scenic reserves scheme.[157]

10.6.33 Taupo County Councils therefore imposed a zoning designation "Proposed Lakeshore Reserve" over land targeted for the scheme, which flagged that the land would be acquired as a reserve at some future date, thus preventing it from being developed or sold. Such designations caused significant difficulty to owners who wished to make even the most modest use of their ancestral land.[158]

10.6.34 In November 1981, the Taupo County Council published a comprehensive report, which set out its proposals for the Lake Taupo Lakeshore Reserves Scheme in exhaustive detail. Each prospective reserve was given a Reserve number, a Valuation number, its locality and legal description, along with title area in hectares, land value, capital value, proposed reserve area, the value of the reserve portion and its status. The report then gave a description of each proposed reserve, its "type", some comments and the name and address of the owner or owners. Thus, for Reserve No. 1.1, the following information was recorded:

[156] McBurney 253
[157] McBurney 268
[158] McBurney 268

Table 12 Details of Proposed Reserve 1.1 Rangatira Point

Valuation number	738017201
Locality	Jerusalem Bay
Legal Description	Rangatira Pts 1A1B1, 1A1A2 etc.
Title Area (Hectares)	339.9518
Land Value $	$750,000
Capital Value	$750,000
Proposed Reserve Area (Hectares)	45.61
Valuation	$100,600
Status	R.O.W.
Description of Proposed Reserve	Ponui Pa & foreshore & upper Mine Bay catchment
Type of Reserve	Proposed Scenic Reserve
Comments	Catchment & Historic Site Protection
Address and Name of Owner[s]	Hiruharama-Ponui Inc. c/- A. Wilson, Ohinemutu, Rotorua.

10.6.35 On 19 August 1987, the Māori Land Court made an order creating a Māori Reservation of an area of 1.3000 hectares (3 acres 0 roods 34 perches) from the Hiruharama-Ponui block, which was vested in the Hiruharama-Ponui Incorporation. A further area of 0.0201 hectares (less than 1/5 of an acre) was also created a Māori Reservation from the Hiruharama-Ponui block on 5 June 1997.[159]

10.6.36 Ngāti Rauhoto are bitter about the loss of the land at Rangatira Point, saying that it went to pay a butcher's bill.[160]

10.7 Ngati Rauhoto and the Nukuhau and Rangatira Blocks

10.7.1 In 1974, a Royal Commission was set up by the Hon. Matiu Rata, the Minister of Māori Affairs, to investigate the future use and title history of the Rangatira B & C blocks.[161]

10.7.2 Title fragmentation had been a major obstacle to the development of Māori land, and so it has proved for Ngāti Rauhoto and Ngāti Te Urunga with respect to their land at Nukuhau and the Rangatira blocks.[162]

[159] McBurney 272
[160] McBurney 276.
[161] McBurney 289
[162] McBurney 289

10.7.3 Development initiatives had been in train for nearly twenty years with no discernable success, and by the mid-1970s it was not only the Māori owners who were frustrated by this situation. [163]

10.7.4 The Taupo County Council viewed the area as suitable for urban expansion, and it appears that initial steps had been taken to acquire the Rangatira C block from the Māori owners, possibly on account of the non-payment of rates. [164]

10.7.5 Speaking for the owners before the Commission, Harry Dansey said that it seemed to him that:

> *the owners are being battered on the anvil of local ambition by the hammer of national interest. By local ambition I mean the building of a bigger and better and brighter Taupo in which the Māori people have but little part except as a decoration. I think this contention will be borne out by an examination of the submission of the Taupo County Council's town planner, Mr Peter Crawford. In his most interesting, carefully documented, meticulously researched and coldly objective document of more than 12,000 words he devoted more attention to the life support system of trout than he did to the interests of the descendants of people who have lived here for more than 600 years. To be fair he did, on page 26 of his submissions, devote 108 words to the Māori people but these referred to a burial site – important indeed to the people – and those he referred to had been dead for many, many years. It is to the living that attention should be directed, not the dead alone.*

[163] McBurney 289
[164] McBurney 289

10.7.6 Maori landowners were criticized of absentee landlordism, notwithstanding the fact that council designations made it impossible to reside on their whenua,[165] and to a large extent, Council by-laws prohibited development of the land. [166]

10.7.7 The Commission recommended that a central controlling body or bodies be set up, subject to the wishes of the Māori owners, which could "effectively deal with the modern complex conditions which surround the development of this class of land and yet at the same time allow them to preserve or develop those qualities which have particular reference or importance to Māoridom".[167]

10.7.8 While noting that it was imperative to resolve existing litigation and uncertainty of title, the Commission also highlighted the importance of providing adequate reserves and maintaining the essential character of the landscape, noted that "some portions of the land may have to be sacrificed for the common good" and that "sacrifice is not always equal". [168]

10.7.9 The Commission however, stressed view that Māori owners ought not to be called upon to make undue or disproportionate sacrifices in the national interests or in the interests of the general area of Taupo Lake or of Taupo Bay. [169]

10.7.10 The Commission also recommended that the order that had on 4 June 1969 appointed the New Zealand Insurance Co. Ltd. as trustee of Rangatira C2 (apparently due to non-payment of rates) be rescinded and that its proper costs be paid by the Government and charged as a debt proportionately against each incorporation.[170]

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[165] McBurney 293
[166] McBurney 299
[167] McBurney 300
[168] McBurney 300
[169] McBurney 300
[170] McBurney 300

10.7.11 In concluding its report the Commission recommended that:[171]

a) the Taupo County Council should give sympathetic consideration to any request made for rezoning the said area of 80 acres in Rangatira C2. Whilst any aggravation of amenity problems is to be deprecated, yet the commission feels that time has acted unfairly against the Māori owners when their position is compared with that of the neighbouring European community which has been allowed to use land as residential.

b) The Government ought to give favourable consideration to granting to each corporation a reasonable sum of money to enable debts to be paid and administration to be set up. The whole problem, which has been costly and time consuming, has resulted from the inadequacy of the Māori Land Court to do justice to the Māori owners in meeting with the requirements of development of land of this type

c) The Council however continued to restrict the ability of Ngati Rauhoto to develop their lands insisting that subdivisions be situated adjacent to urupa, resulting in the unsatisfactory situation of tangata whenua having to live with their 'feet in the urupa'.[172]

d) In 1970 Ngāti Rauhoto faced a Taupo County Council that initiative in the early 1970s to build a marina at Nukuhau, at the lake frontage of the Paenoa Te Akau block. The marina would have affected the frontage of half the block, and the main reason that the Māori owners objected to the marina was the detrimental effect it would have on the many wāhi tapu in the area, and because it would obstruct the flow of

[171] McBurney 305
[172] McBurney 306

the lake towards its Waikato River outlet which is a symbol of fertility for the area.[173].

e) The Council has allowed the bull dozing of tracks after guaranteeing to Maori owners that they would remain mere walking tracks, and as a result 'shanty style settlements' have arisen at the ends of them consisting of non-permitted dwellings that the local power company supplies. [174]

f) The roads that have been constructed by the Council have disturbed koiwi and has destroyed burial sites. [175]

g) On 16 August 1984, 0.2897 ha (0a 2r 34.5p) of Maori land instead of Crown land, was taken from the Rangatira E block to provide a site for the sewage treatment plant at Acacia Bay. [176]

h) The Council continues to pump reservoir water a mere 10 meters from the mouth of a burial cave. [177]

[173] McBurney 306
[174] McBurney 306
[175] McBurney 306
[176] McBurney 308
[177] McBurney 308

11.0 Public Works Takings

11.1 Breach

11.1.1 In breach of Te Tiriti o Waitangi, the Crown imposed and developed Public Works Legislation which has in the past, and continues to, dispossess Maori of their land, resources and taonga.

11.1.2 The Crown's imposition of the Public Works Legislation occurred within a consultative vacuum. In failing to consult with and to genuinely negotiate with Maori to purchase the land, the Crown acted in breach Te Tiriti o Waitangi, infringing upon the claimants rangatiratanga and their rights to full exclusive and undisturbed possession of their land, which included the right to control entry to as well as ownership of their land.

11.1.3 The Crowns compulsory acquisition of Maori land without the provision of compensation amounts to a raupatu. This acquisition was discriminatory and in breach Te Tiriti o Waitangi which obligated the Crown to act with utmost good faith to Maori.

11.1.4 The Crown's establishment the hydro-electric power scheme on the Waikato River, which included the construction of the Taupo Control Gates was in breach of the principles of the Treaty of Waitangi as it failed to give adequate consideration to the effects of the scheme on Taupo Maori, their taonga tuku iho, and the negative impacts on future economic, social and cultural development and tribal identity.

11.2 Particulars

11.2.1 The Crown adopted and pursued a policy of compulsory acquisition of the claimants' lands.

11.2.2 There was a lack of genuine consultation prior to the event about the necessity to acquire Māori-owned land, or to occupy and use it for a time, rather than proceed with the work in some other way.

11.2.3 Because the Minister of Public Works was given the authority to decide whether an objection should be upheld or not the Crown was judge in its own prosecution case. It was not until 1973 that an independent body was allowed to pass judgment on objections.

11.2.4 There was no requirement to notify all owners or, until 1974, convene a meeting of owners to discuss whether a taking was acceptable to owners.

11.2.5 There was marked lack of use of provisions enabling agreement to be reached with owners beforehand to a taking of Māori land, notwithstanding that prior agreement was more common with European-owned land than with Māori-owned land.

11.2.6 Lack of ability to object effectively in the frequent cases of road realignments where survey of the land required to be taken was made after the realignment had been constructed, and an opportunity to object was only available after survey had been completed and a notice of intention to take the land was then issued; in many cases this could be some years after the road realignment had been constructed and brought into public use, so there would have been no grounds for an objection to be sustained.

11.2.7 The Crown wantonly disregarded protests to the compulsory acquisition of the land from the Maori owners.

11.2.8 Māori-owned land was targeted because such land was, as a result of ownership complications, frequently the less developed land in the district, and was also therefore cheaper to acquire. The ownership complications also made the use of the compulsory acquisition

legislation more attractive than direct willing buyer / willing seller negotiation with owners.

11.2.9 A lack of active protection by the Crown for the Māori interest in retaining their lands; even when Māori land had to be taken, financial compensation was preferred to other forms of compensation such as provision of other lands in exchange.

11.2.10 A focus, based on ease of administration, which encouraged acquisition by the Crown of the whole of the interest in land, rather than the acquisition of a part interest (e.g. leasehold, easement) sufficient to enable the public work to proceed, while allowing Māori to retain a stake in the economic development of a district.

11.2.11 The amount of financial compensation could be offset by the value of the benefit which the owners received from the public work on their remaining land (the betterment principle), even when the owners had not asked for the public work in the first place.

11.2.12 Between 1962 and 1974 compensation was negotiated with the Māori Trustee rather than the owners themselves, where there were four or more owners; the owners were effectively disenfranchised from the process.

11.2.13 There were long delays between land being occupied for a public work and compensation being paid to the owners. This was mitigated to an extent by the practice of paying interest on the amount of compensation due, but an interest payment was of little benefit when a house or a livelihood was lost or affected by the initial occupation.

11.2.14 There was no requirement that when land ceased to be used for the purpose for which it was taken, it should be returned to its former owners.

11.2.15 The Crown failed and/or refused to instruct its agencies and local authorities to consult with Maori owners and have regard to the existence of waahi tapu and other important sites in the lands compulsorily acquired, allowing its agencies and local authorities to compulsorily acquire land unnecessarily without due regard for alternative means of obtaining use of the land, such as leasing.

11.3 Policy Framework

11.3.1 Prior to the imposition of the Public Works Legislation, the Public Roads and Works Ordinance 1845 dealt with works at a local level and did not allow provincial governments or local bodies to take land. Rates could be levied to pay for the cost of construction and maintenance of works on land already acquired and settled.[178]

11.3.2 The development of infrastructure such as roads proceeded as the Crown purchased land for settlement and made provision for public works from these purchases. [179]

11.3.3 The Crown justified the low price paid to Māori for their land compared to the price the land was on sold for by the Crown by the need to invest in the development of public works. [180]

11.3.4 While the passing of the 1852 Constitution Act gave the settler government greater control of land taking, Māori customary land was supposed to remain exempt.[181]

11.3.5 The Native Lands Act 1862, empowered the Governor was to take five percent of land purchased from Māori for roading purposes. [182]

11.3.6 In 1863, the Attorney General gave weight to the Crown assumption of Crown rights over customary Māori land as 'Demesne Lands of the Crown' opining that "... the Crown has legal right to use land

[178] McBurney 15.
[179] McBurney 15.
[180] McBurney 15.
[181] McBurney 16

over which the Native title has not been extinguished, for the purpose of making roads and for military defence."[183]

11.3.7 The public works legislation empowered provincial governments to undertake the work required on confiscated lands to make them attractive for settlement. [184]

11.3.8 The Public Works Act 1864 was the first specific legislative authority for central government to take both customary and Crown granted Māori land for public works purposes. [185]

11.3.9 here was little practical difference between punitive confiscations and compulsory taking of land for public works, particularly as public works takings at this time were of a military nature. [186]

11.3.10 Despite being based on English public works legislation, the new imposed regime contained few of the protections afforded under that jurisdiction. [187]

11.3.11 In 1870, the Immigration and Public Works legislation that was enacted that year was implemented. This legislative framework allowed for the compulsory acquisition of land for roads and railways and also empowered the Government to negotiate to purchase land which would then be declared "Waste Lands of the Crown", which then could be used for infrastructural development including the establishment of settlements, roading and railways. [188]

11.3.12 The legislation explicitly allowed the Governor to enter into negotiations for Māori-owned land even though the land had not passed through the Native Land Court. [189]

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[182] McBurney 16
[183] McBurney 15
[184] McBurney 16
[185] McBurney 16
[186] McBurney 17
[187] McBurney 17
[188] McBurney 17
[189] McBurney 17

11.3.13 In 1876 the provincial system established under the 1852 Constitution Act was abolished. At that time local authorities were empowered to take all types of Maori land under compulsory provisions. Maori were generally not represented on local bodies and the 1876 Act did not require local authorities to take special account of Maori interests. Nor did it provide an adequate system of the monitoring the use of compulsory taking powers by local bodies. [190]

11.3.14 The Public Works Act 1876 consolidated all previous public works legislation, giving the Government power to take land compulsorily. [191]

11.3.15 Following the passive resistance undertaken at Parihaka, in 1882 the Crown enacted a new Public Works Act which empowered the Governor to take Native lands without giving notice to the owners, denying the owners the right of objection. [192]

11.3.16 These safeguards were only restored in 1887 for Māori land that had passed through the Native Land Court. Customary land that had yet to pass the Court remained unprotected.[193]

11.3.17 The Native Land Court served largely as a Compensation Court, charged with ascertaining the amount of compensation payable to Māori for customary land taken for Public Works purposes. The inherent discrimination of the Native Land Court is visible in the strong resistance of Pākehā to having their compensation claims heard by the Native Land Court, as it was seen as offering lower values compared to compensation commissions specially constituted to deal with claims by the general public. [194]

[190] McBurney 17
[191] McBurney 17
[192] McBurney 18-19.
[193] McBurney 19.
[194] McBurney 19.

11.4 Roading

11.4.1 Almost without exception, compulsory acquisitions of land were made without paying the Maori owners of the land any compensation,[195]

11.4.2 Many of these roads were not built or intended as "public roads" at this time, particularly where the Crown's ambitions with respect to the Rotorua tourism industry were involved.[196]

11.4.3 Not all land taken under public works legislation was used for the purpose it was originally acquired, and in some cases the Crown took more land than it needed. In either case, this land may be diverted to other purposes quite unrelated to the original reason for taking the land. Such land is seldom, if ever, returned to the original owners.[197] For instance:

a) In the area of State Highway 5 a substantial portion of land was acquired by the Crown under public works legislation for roading purposes. [198]

b) The land taken was much more than was needed for the road line of the highway, notwithstanding the fact that it is a main road. [199]

c) Unused land on the southern side of the road opposite De Brett's Hotel has since been diverted into Council ownership, who are now proposing to develop it as a subdivision, adjoining another portion of the same subdivision that has already passed the resource consent process. [200]

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[195] Doc A82, p 426.
[196] Doc A82, p 428.
[197] Doc A82, p 431.
[198] Doc A82, p 431-432.
[199] Doc A82, p 431-432.
[200] Doc A82, p 431-432.

d) To the north east of the proposed subdivision is a deep gully, which has the same history – it was originally taken for roading purposes, and has subsequently been vested in the District Council. Like the subdivision land, it too has been divided into two parts. Half of this gully has already been sold, and the remaining portion adjacent to S. H. 5 is currently under negotiation for sale to the same individual.[201]

11.5 Hydro Schemes

11.5.1 The consultation with Taupo Maori prior to establishment of the scheme was inadequate. The Crown did not have proper regard to Ngati Tuwharetoa's relationship with Taupo-nui-a-tia, having wrongly taken the lake from Ngati Tuwharetoa in 1926.

11.5.2 The construction of the Taupo Control Gates at the outlet of Lake Taupo impeded the flow of the waters of Taupo-nui-a-tia and harmed the mauri of the lake and Te Awa o Waikato.

11.5.3 The dams on the Waikato River have permanently destroyed wahi tapu and places of special significance to Ngati Tuwharetoa, including Aratiatia and Orakei Korako.

11.5.4 The construction of the scheme necessitated public works takings of land, and consequential community and hapu social dislocation.

11.5.5 Lake Taupo is used as a reservoir and as such it is integral to the scheme. Yet the Crown failed to provide an opportunity for Ngati Tuwharetoa to participate in the benefits of a major economic asset in their rohe that uses their taonga.

11.5.6 The Crown has failed adequately to compensate Ngati Tuwharetoa for the impact of the Waikato River hydro scheme, notwithstanding the Lake Taupo Compensation Claims Act 1947.

[201] Doc A82, p 431-432.

11.5.7 The tino rangatiratanga of Ngati Tuwharetoa has been undermined by the failure to give Ngati Tuwharetoa a meaningful role in the management and decision-making process relating to the operation of the Waikato River hydro scheme.

11.5.8 The establishment and operation of the Waikato River hydro scheme has resulted in the desecration of nga taonga tuku iho of the peoples of Taupo, including in particular Taupo-nui-a-tia and Te Awa o Waikato, in spiritual and environmental terms:

11.5.9 Harming of the mauri of the lakes and rivers, through artificial interference with the natural flow of the waters from the mountains to the sea, the artificial rising and lowering of the water and the mixing of water from the Whanganui headwaters;

11.5.10 Flooding caused by high and fluctuating lake levels, particularly at the southern end of the lake. During the 1940s, Lake Taupo was held at artificially high levels and this caused extensive damage and flooding in Tokaanu and other areas;

11.6 Damage and loss of wahi tapu;

11.6.1 The destruction of bio-diverse native species including the fishery, and the consequent loss of this important resource for Tuwharetoa. Prior to the Taupo Control Gates, the upper Waikato River was a world renowned fishery, but has been completely wiped out;

11.6.2 Other environmental damage, such as erosion around Lake Taupo and on the upper Waikato River.

11.6.3 The consequential loss of cultural knowledge as a result of the destruction of wahi tapu and changes in the environment.

12.0 Alienation of Natural Resources and Environmental Degradation

12.1 Breach

12.1.1 The Crown, in breach of the principles of the Treaty, and in particular its obligation to protect the lands and rangatiratanga o nga tupuna o Te Takere o Nga Wai, pursued policies and practices specifically designed to undermine tribal and chiefly authority, and Maori customary law, in order to facilitate Crown acquisition of tribal lands.

13.0 Geothermal Resources

13.1 Breach

13.1.1 The Crown in breach of the principles of the Treaty failed to provide and protect interests in the geothermal springs and resources within dominions of those from whom Te Takere o Nga Wai descend.

13.1.2 The Crown in breach of the principles of the Treaty failed to recognise the rangatiratanga and kaitiakitanga over their geothermal springs and resources.

13.1.3 The Crown trespassed on and exploited geothermal resources without due regard for the spiritual significance of the resources, without consulting, without payment, and without due regard for their customary ownership and kaitiakitanga over the resources.

13.2 Particulars

13.2.1 Geothermal resources were allocated according to tikanga Maori and were seen as keystones to the identity of Maori who related to them. They were used for a number of reasons including[202]:

a) Medicinal purposes, in particular for the treatment of skin diseases and rheumatic complaints;

b) Cooking and food preparation;

c) Heating;

d) Washing;

e) Bathing;

[202] Boast "The Hot Lakes: Maori Use and Management of Geothermal Areas from the Evidence of European Visitors" Doc A24, pp114-121

f) Extraction of various products, including paru, kokowai, soap, and clay;

g) cultivation.

13.2.2 Rights to use geothermal pools and springs were allocated according to Maori customary law

13.2.3 In 1952 parliament began to erode the keystones of Maori identity enacting the Geothermal Steam Act 1952 which assumed usufructuary ownership of rights in geothermal steam. Section 3 of the Geothermal Steam Act 1952 stated:

> *Subject to the provisions of this Act, the sole right to take, use, and apply geothermal steam for the purpose of generating electricity shall vest in the Crown.*

13.2.4 In 1953 the Geothermal Steam Act was repealed by parliament and replaced by the Geothermal Energy Act 1953. Through this Act, the Crown increased the purveyance of their usufructuary entitlement to the geothermal steam removing some of the limits of the earlier act. Section 3(1) of the Geothermal Energy Act 1953 stated:

> *Notwithstanding anything to the contrary in any Act, or in any Crown grant or certificate of title or lease or other instrument of title in respect of any land within the territorial limits of New Zealand, the sole right to tap, take, use and apply geothermal energy on or under the land shall vest in the Crown, whether the land has been alienated from the Crown or not.*

13.2.5 The intention and effect of this legislation was to negate private property rights and subordinate Maori property rights by requiring that all users of the resource require a permit from the Crown.

13.2.6 Section 10 of the said Act permitted the Crown to levy a resource rental for use of the Geothermal Resource. Maori were to be charged for access to their identity.

13.2.7 This negativing of rights held by Maori amounts to a confiscation of interests in geothermal resources and was undertaken in the absence of consultation and compensation.

14.0 Forestry

14.1 Breach

14.1.1 In breach of Te Tiriti o Waitangi, the Crown undermined the rangatiratanga of Taupo Maori and in the purported pursuance of objectives of national importance:

a) to gain under Crown control the largest virgin indigenous forest left;

b) to control the harvesting of remaining indigenous timber to avoid the collapse of the timber market and the beginning of a timber famine;

c) to develop an exotic state afforestation programme to give a permanent supply of timber for domestic and export use; and

d) to withdraw from the industry when Government involvement creates economic inefficiencies.

e) To facilitate the acquisition of land for European settlement and in breach of its obligations to protect Maori in possession of their resources and their rights to control such property in accordance with their own customs and having regard to their own cultural preferences, the Crown has:

f) allowed its land purchasing programme to interfere with the economic development of Maori;

g) inhibited Maori in their ability to maintain their own way of reaching agreements by undermining commercial agreements that had been entered into by Maori for timber and forestry development; and

h) inhibited and restricted the development of the forestry industry which led to the diminishment and waste of Maori timber resources.

i) The pursuit of the conservation of indigenous timber during the twentieth century in the national interest occurred at the expense of the rangatiratanga of Central North Island Maori forestry owners.

j) The Crown manipulated the hopes and aspirations of Maori, utilizing their impoverishment as a tool to ensure their continued participation within the developing forestry industry, marginalizing traditional communities through industrialisation.

14.2 Particulars

14.2.1 The principal issues relating to Crown forestry policy and the Claimants includes:

a) Crown policies, enactments, acts and omissions relating to the Crown's acquisition of Claimant's forests.

b) Crown policies, enactments, acts and omissions intended at restricting or prohibiting Claimant's utilisation of forests situated on land blocks vested in Claimants.

14.2.2 The blocks acquired by the Crown in the Central North Island for the purposes of afforestation included ancestral lands of the Claimants which contained substantial areas of merchantable indigenous forest. These areas of forest were subsequently milled by the Crown and the Crown appropriated the proceeds of such milling to itself in breach of the provisions and principles of the Treaty of Waitangi.

14.2.3 The Crown's acquisition of and milling of such areas of indigenous forest was a breach of the provisions and principles of the Treaty of Waitangi in that:

a) The Crown failed to pay a fair price for the forests:

b) The Crown failed to give any or any effective redress to petitions and complaints relating to the Crown's acquisition of the forests.

14.2.4 The Crown took a sequence of actions aimed at preventing or restricting owners of Maori-owned blocks (including blocks traditionally occupied and utilised by the Claimants to sustain their way of life) from milling or from realising the full value of timber on their own lands. These included:

a) Enacting the Forests Act 1921-22, various provisions of which were intended to impose controls on areas of indigenous forest owned by Maori;

b) Enacting the Forests Act 1949, s 65 of which gave power to the Minister of Forests to prohibit the owners of areas of Maori freehold land from entering into forestry leases with private sawmillers;

c) Enacting s 218 of the Maori Affairs Act 1953, which also gave power to the Minister of Forests to prohibit owners of Maori freehold land from entering into forestry leases with private sawmillers;

d) Enacting s. 34 of the Soil and Rivers Control Amendment Act 1959, which allowed catchment boards to issue notices relating to specific areas prohibiting activities likely to facilitate soil erosion or cause deposits in watercourses;

e) Enacting provisions in the Town and Country Planning Acts of 1953 and 1977 which allowed local authorities to restrict or prohibit forestry operations on areas of Maori freehold land; and

f) Enacting the Forests Amendment Act 1993 which imposed further restrictions on milling indigenous timber.

14.3 The Regulation of the Central North Island Maori indigenous Timber Industry (1870-1960)

14.3.1 In many areas within the Central North Island, indigenous timber was the only resource available for many landowners to pay for daily living expenses, meet any hardships that arose, provide the opportunity to meet any shared community needs or provide a way forward with land development.

14.3.2 In the face of an identified timber shortage, the Crown via the Forest Service increasingly sought to impose restrictions on unregulated indigenous timber use. This policy impacted heavily on the Central North Island where the largest timber stands remained and mainly affected Maori who were the owners of these timberlands.

14.3.3 Within the Taupo district, at least as far as the timberlands to the south and west of the Lake are concerned, the Crown maintained a prohibition against commercial timber use for as long as possible.[203]

14.3.4 Initially this control was kept in place whilst acquisition of the resource or the land and resource was attempted. When such acquisition failed, the prohibition remained whilst other alternatives were considered. [204]

14.3.5 Within other areas of the Central North Island, conservation of the indigenous resource was attempted through Crown regulatory intervention aimed at controlling every timber cutting arrangement. This achieved its intended outcome of freezing much timber cutting activity and slowing up the rate of any cutting that proceeded. It also had the unintended, although not unexpected, result of driving

[203] Walzl 920

timber cutting into a series of illegal agreements reached between owners and timber cutters.

14.3.6 None of these alternatives were in accordance with the tangata whenua objectives and therefore, were not accepted by the timber owners.[205]

14.3.7 Under these illicit conditions timber extraction led to the very waste that the Forest Service was seeking to control. In placing further controls on timber cutting, the evidence reveals that the Forest Service did not have the resource capacity or the expert capability of conducting the appraisals in a timely manner causing ongoing difficulties for Maori timber owners in the utilisation of a key resource.

14.3.8 In 1943, when the Crown released its control these timber lands had, in some cases, been under restriction against use for almost 40 years despite ongoing owner protest and evidence of hardships being experienced..[206]

14.3.9 The Forest Service regulation was brought into effect without any consideration of the impact that might arise on the timber owners.[207]

14.3.10 When that impact was recorded by local Court officials, the Forest Service did not desist with regulation or pursue a means to ameliorate its impact.[208]

14.3.11 This led to other officials suggesting that the Forest Service single-mindedly pursued its objectives of conservation without considering, and at the expense of, the rights of others. [209]

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[204] Walzl 506
[205] Walzl 506
[206] Walzl 506
[207] Walzl 507
[208] Walzl 507
[209] Walzl 507

14.3.12 The Crown never sought to explore if the meeting of national interest was not by necessity, automatically antagonistic to the meeting of Treaty interests, and there is little if any recorded instances of the Forest Service acknowledging the need to consult or negotiate.[210]

14.3.13 No efforts made to consider or act against any negative impact that might befall Central North Island Maori.[211]

14.4 Exotic timber afforestation and Central North Island maori (1890-1990)

14.4.1 Despite efforts at control by the Crown, the indigenous timber resource dwindled quickly during the first half of the twentieth century. In response, the Crown developed a policy of exotic timber afforestation under which thousands of acres of Crown land in the Central North Island were planted in the years prior to World War II.

14.4.2 In the post-war era, a major decision was made to utilise the timber resource created from the ongoing afforestation efforts so as to create a domestic and overseas timber, pulp and paper market. To do so required the development of a great deal of infrastructural and regional development within the Central North Island.

14.4.3 The development of a state exotic afforestation and processing programme on the level that it was undertaken in the Central North Island not surprisingly came to affect the tangata whenua who were living there. .[212]

14.4.4 When an assessment of labour requirements for the project was made, it was identified that Central North Island Maori, as well as those from other areas would play an essential role.

14.4.5 Central North Island Maori, after experiencing varying degrees of land loss, and faced with the reality of meager holdings of

[210] Walzl 507
[211] Walzl 507
[212] Walzl "Maori and Forestry" Doc A80, p610

productive land and the absence of capital to develop other options, responded to the new forestry undertaking. This occurred within the context of Crown officials promising ongoing job security.

14.4.6 By the beginning of 1946, the State Forest Service recorded that between 1936 and 1945, state forests had increased by 1,200,000 acres to a total of 9,100,000 acres. State Forest workers had increased from 200 in 1935, to 1,400 in 1941, and then to 1,000 in 1945.[213]

14.4.7 The strong participation in the new forest industry resulted in a massive reformulation of Central North Island Maori settlement patterns and their way of life. Pre-industrial workers were industrialised. New communities were created while old communities are undermined. The landscape was terra-formed and a new society was created.

14.4.8 However, despite the encouragement of Maori into the forestry workforce, there was a continuing reluctance to acknowledge their skills and potential.[214]

14.4.9 Workers were brought to Kaingaroa from overseas. The idea was to bring skilled forestry workers to Kaingaroa as it was believed that this level of skill was not available in New Zealand.[215]

14.4.10 When they came, it was often the Maori bush workers who had to show the foreigners how to work the machinery being used.[216]

14.4.11 Despite this, when the Canadians arrived, they were given new houses that were fully furnished and even stocked with food.[217]

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[213] Walzl 961.
[214] Walzl "Maori and Forestry" Doc A80, p610
[215] Doc A80, Ibid
[216] Doc A80, Ibid
[217] Doc A80, Ibid

14.4.12 Both Maori and Pakeha workers noted this differential treatment with some resentment. Within a matter of four or five years, however, almost all of the Canadian workers had left forestry.[218]

14.4.13 The afforestation, from humble beginnings, grew in size to become the largest man made forest. With that resource in place, from the 1950s, a regional infrastructure was put in place to harness the resource to the greatest potential possible.[219]

14.4.14 A second wave of afforestation cemented this industry in place.[220]

14.4.15 Whilst the industry was being constructed by the Crown as required, so too the tangata whenua of the Central North Island were being re-formed for participation as a major platform of the industry.[221]

14.4.16 Participation occurred at a cost, however. Maori lands were utilised as the forest industry demanded. For many claimants, their turangawaewae was transformed as forestry or mill towns grew up in their midst bringing irreparable changes and a number of hitherto unexperienced social problems.

14.4.17 Communities not in the midst of a forest, but within the proximity of forestry operations, often experienced unexpected environmental degradation and other problems. [222]

14.4.18 Central North Island Maori were presented with a series of fait accompli to which they had to adapt. These fait accompli included:

a) prohibitions over the use of land and timber resources that last for decades;

b) restrictions on making private arrangements for cutting timber that also disrupts the use of the only •

[218] Doc A80, IBid
[219] Doc A80, Ibid, p914
[220] Doc A80, Ibid
[221] Doc A80, Ibid
[222] Doc A80, Ibid

14.4.19 For the tangata whenua, this had been achieved with a measure of coercion and cooperation. For those whose lands had been acquired under questionable processes in the nineteenth or early twentieth century and later used for forestry or those whose land had been taken or purchased for forestry, there had been a painful experience to go through. For others, their turangawaewae had been transformed as forestry or mill towns, had grown up amongst their midst bringing irreparable changes and a number of hitherto unexperienced problems.[223]

14.4.20 In some cases, Central North Island Maori were encouraged, (some would say forced), by government policy to leave their homes and resettle in new environments. The cost of doing so was to lose connections with their homelands. For others, there were few other options than to participate in the new rising industries as previous land loss, insufficiency of productive land or absence of capital had rendered other options unfeasible.[224]

14.4.21 Those who hesitated to do so were encouraged by the promise of an industry being developed that would provide jobs for life for themselves and their descendants.[225]

14.4.22 Such a promise, made by prominent men of business and government, and reiterated by countless officials, was sufficiently strong to bring about participation on a large scale.[226]

14.4.23 A social contract was struck. In return for participation a good wage was paid, good work conditions were given (at different places and different times), a standard of living was raised and a lifestyle was secured. Participants were given a sense of continuity as three or four generations of whanau worked in the forestry. Young men were

[223] Doc A80, Ibid
[224] Doc A80, Ibid
[225] Doc A80, Ibid
[226] Doc A80, Ibid

given a sense of achievement and pride in their work and their own prowess at the job.[227]

14.4.24 Communities grew up in the knowledge that they were participating in something from which the whole country benefited. In return for the promise of work without end, participation was to occur without protest or complaint, despite the hard work, the demands of an industrialised work regime, the sometimes gruelling conditions, the social upheavals of living in new environment, the encounter with racial discrimination and the accumulating health risks that resulted for some in early deaths.[228]

14.4.25 The presence of a social contract was well understood in that tangata whenua "[had] co-operated with the pakeha government for generations to lease or sell and then to work the forestry lands."[229]

14.4.26 The Crown called on the tangata whenua to participate in the furtherance of the national interest and in the expectation of the receipt of benefits for themselves. The tangata whenua participated as requested despite the fact that for many a wide range of expected and unanticipated costs were experienced. Whilst McLennan's succinct summary is correct, what had occurred in the Central North Island between the Crown and the tangata whenua was more than a social contract, however, as the people with whom this agreement was made were Treaty partners.[230]

14.4.27 Then, after 85 years of State involvement in developing this industry, of putting all that was necessary in place – trees, roads, railways, towns, people – the Crown withdrew from the industry.[231]

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[227] Doc A80, Ibid
[228] Doc A80, Ibid
[229] Doc A80, Ibid
[230] Doc A80, Ibid
[231] Doc A80, Ibid

14.4.28 By the time of the 1980s restructuring, this reformation had been completed. Pre-industrial workers had been industrialised. New communities had been created. Maori lands had been utilised as the forest industry demanded. Landscapes had been terra-formed. A new society had been created.[232]

14.4.29 Restructuring was undertaken with little preparation for social impacts, without Treaty rights being taken into account and with few effective interventions. The social impacts are shown to be deep and ongoing among Central North Island Maori who had formerly participated in state forestry

14.4.30 During the forestry restructuring, Treaty issues were recognised in respect of the transfer of forestry assets as a means of satisfying Treaty claims. However, the removal of more than 1,500 persons from employment in the Central North Island, 80% or more of whom were Maori, who had gone through a massive social and economic transformation to ensure their participation as requested by the Crown, was not viewed as a Treaty issue.[233]

14.4.31 For the Government to take this view during the 1980s restructuring created inconsistencies in advice. In the case of the rights of residents of Kaingaroa, the Department of Maori Affairs declared that because of the high percentage of residents that were Maori (75%) and the high numbers among them who were tangata whenua, any decisions made had to take into account Treaty issues.[234]

14.4.32 On this basis, the residents were eventually able to gain concessions towards their viewpoint. This same line of thinking could easily have been applied to the whole restructuring process. Had the restructuring of an entire workforce, many of whom were Maori, been viewed as a Treaty issue then possibly increased community or

[232] Doc A80, Ibid
[233] Doc A80, Ibid

iwi funds could have been made available, (instead of individual entitlements only), greater consultation might have been required and possibly a more gentle and even sympathetic implementation process brought into being – one that was less destructive of communities.

[234] Doc A80, Ibid

15.0 Prejudice and Relief

15.1 It has been our intimation since the commencement of preliminaries surrounding the participation of Nga Rauru o Nga Potiki to provide a contextual and holistic approach to the description of Prejudice that has been incurred by Te Takere o Nga Wai. This has been a position that counsel have consistently put before the Tribunal.

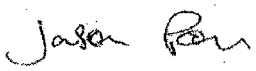
15.2 This section will therefore be pled upon the receipt and consideration of the four outstanding research reports.

16.0 Amendments

16.1 In the absence of complete research, the Claimants reserve the right to amend or add further to the claim as appropriate.

DATED AT ROTORUA THIS 8TH DAY OF DECEMBER 2004

ANNETTE SYKES



JASON POU

TO: The Registrar, Waitangi Tribunal, Wellington

AND TO: The Crown Law Office

AND TO: Claimant Counsel for the Claimants involved in the Central North Island Waitangi Tribunal Claims Inquiry District

This **STATEMENT OF CLAIM** is filed by **JASON MILES POU** and **ANNETTE TE IMAIMA SYKES**, representatives for the Claimants, of the firm Rangitauira & Co.

The address for service on the abovenamed Claimants is the offices of Rangitauira & Co. Solicitors, Third Floor, Trust Bank Building, Hinemoa Street, Rotorua.

Documents for service on the abovenamed Claimants may be left at the address for service or may be:-

a) Posted to the solicitor at Rangitauira & Co, PO Box 1693 Rotorua; or

b) Left for the solicitor at the document exchange for direction to Rangitauira & Co at DX JP 30025 Rotorua; or

c) Transmitted to the solicitor by fax