IN THE WAITANGI TRIBUNAL

Wai 1200# 1.1.41(a)
Wai 1200#1.1.49(a)
Wai 1200 #1.1.53(a)
Wai 1200 #1.1.58(a)

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 for the Whakarewarewa Geothermal Valley (WAI 268)
AND	a claim by for the Whakarewarewa State Forest (WAI 317)
AND	a claim by for the Geothermal Resource Claim (WAI 335)
AND	a claim by for Ohinemutu Village (WAI 384)

FIRST CONSOLIDATED STATEMENT OF CLAIM
Dated this 1st day of November 2004

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PART A - CLAIMS

THE CLAIM

This is a consolidated claim bought for and on behalf of Ngati Whakaue under WAI 268; 317; 335 and 384.

THE CLAIMANTS

1. The claims are brought by:

   a. the late Hamuera Taiporotu Mitchell (replaced by Hamuera Walker Mitchell and Hamilton Manaia Pihopa Kingi) for the benefit of the members of Ngati Whakaue and the hapu of Ngati Te Hurunga (Hurungaterangi) Ngati Kahu (Kahuupoko) and Ngati Taeotu **(WAI 268)**;

   b. the late Hamuera Taiporutu Mitchell (replaced by Hamuera Walker Mitchell), Hamilton Manaia Pihopa Kingi, Malcolm Tukino Short, Alexander James Wilson, Andrew Shane Gibbons, Stuart Rotohiko Te Haupapa Harrris and John David Rangitauira on behalf of themselves, Pukeroa Oruawhata Trust and the Proprietors of Ngati Whakaue Tribal Lands Incorporated and for the benefit of the members of Ngati Whakaue **(Wai 317);**

   c. the late Hamuera Taiporutu Mitchell (replaced by Hamuera Walker Mitchell), and Hamilton Manaia Pihopa Kingi on behalf of themselves and for the benefit of the members of Ngati Whakaue **(WAI 335)**; and

   d. Ngawiki Porter, Alexander James Wilson, Andrew Te Amo, Theo Netaitio Tait, Ruihana Phillips, Maxine Te Kowhai-Rennie, and the late Maruea Shuker on behalf of themselves and those of Ngati Whakaue who have an estate or interest in land in Ohinemutu Village and for the benefit of the members of Ngati Whakaue **(WAI 384).**

2. This First consolidated Statement of Claim identifies, in terms of Sections 6(1)(a) through to (d) of the Treaty of Waitangi Act 1975 ("the Act"), various breaches by the Crown of the principles of the Treaty of Waitangi that have caused, continue to cause, or will cause prejudice to Ngati Whakaue.

3. The Waitangi Tribunal is therefore requested pursuant to the provision of the Act to inquire into this claim and to report on the causes of action and recommendations sought as submitted.

PART B - JURISDICTION

4. The Claimants of WAI 268, WAI 317, WAI 335 and WAI 384 are Maori and make claims on their own behalf and on behalf of Ngati Whakaue within the Confederation of Te Arawa and for the benefit of the members of Ngati Whakaue.

5. The Claimants and the hapu, whanau and individuals of Ngati Whakaue for whom the claims are brought are Maori and have been and remain prejudicially affected by the Ordinances, Acts, Regulations, policies, practices, acts and omissions of the Crown set out herein which were enacted, promulgated, formulated, undertaken, done or omitted to be done by the Crown in breach of the principles of the Treaty of Waitangi.

6. This consolidated Statement of Claim combines the above claims whose history and status we have briefly set out for the administrative convenience of the Tribunal:

WAI 268 Whakarewarewa Geothermal Valley

a. This claim was filed on 12 December by the late Hamuera Taiporutu Mitchell as elder of Ngati Whakaue and of the hapu of Ngati Hurunga, Ngati Kahu and Ngati Taeotu. The claim was registered as WAI 268 on 31 January 1992. The present claimants are Hamuera Walker Mitchell and Hamilton Manaia Pihopa Kingi both as leaders of Ngati Whakaue and members of the said hapu.

b. The claim as originally filed relates to the wrongful taking by the Crown of land and geothermal resources presently known as the Whakarewarewa Geothermal Valley (Whakarewarewa No 3) as a result of the Crowns Purchasing Policy of the late 1800's.

c. This claim is made for the benefit of the members of Ngati Whakaue and the hapu of Ngati Hurunga, Ngati Kahu and Ngati Taeotu.

WAI 317 – Whakarewarewa and Horohoro Forest Claims

a. This claim was filed on 5th October 1992 by the late Hamuera Taiporutu Mitchell, Hamilton Manaia Pihopa Kingi, Malcolm Tukino Short, Alexander James Wilson, Andrew Shane Gibbons, Stuart Rotohiko Te Haupapa Harrris and John David Rangitauira on behalf of themselves, Pukeroa Oruawhata Trust and The Proprietors of Ngati Whakaue Tribal Lands registered as WAI 317 on 20 November 1992. The claim as originally filed relates to the lands of the Whakarewarewa State Forest and the Horohoro State Forest. The claim highlights the wrongful acquisition by the Crown of the greater part of the Ngati Whakaue lands interests in the affected lands.

b. The WAI 335 claim has been part-heard by the Waitangi Tribunal with respect to the geothermal matters under the Tribunal's **"Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993"**

c. The claim is made for the benefit of Ngati Whakaue.

WAI 335 – Ngati Whakaue Geothermal Resource

a. This claim was filed on 19 February 1993 by the late Hamuera Taiporutu Mitchell and Hamilton Manaia Pihopa Kingi as elders of Ngati Whakaue. The claim was registered as WAI 355 on 2nd March 1993.

b. The claim as originally filed relates to the Geothermal Resource of Ngati Whakaue within its traditional boundaries extending from the Puarenga Stream (noting geothermal is also claimed under the Ngati Whakaue claim WAI 268 which applies to the Whakarewarewa No. 3 block also known as the Whakarewarewa Geothermal

Valley) to Lake Rotorua from Lake Rotorua extending north to Waikimihia inland beyond Ngongotaha back to the Hemo Gorge. The claim relates to the wrongful taking of the Geothermal resource by the Crown under various legislation but in particular historically under the Thermal Springs Act 1881 and its amendments, the Crown failed to protect the customary geothermal resources of Ngati Whakaue within its traditional boundaries.

c. The claim is made for the benefit of the members of Ngati Whakaue.

WAI 384 – Ohinemutu Rates Claim

a. This claim was filed by Ngawiki Porter, Alexander James Wilson, Andrew Te Amo, Theo Netaiho Tait, Ruihana Phillips, Maxine Te Kowhai-Rennie and Maraea Shuker (deceased). The claim was registered as WAI 384 on 13 September 1993 .

b. The claim as originally filed related to the Crown's failure in breach of the Treaty of Waitangi, to recognise the terms of the agreement entered into between the Crown and its loyal subjects Ngati Whakaue to identify Ohinemutu Village as a "Kainga Maori" not subject to rating under all rating legislation since 1880. The claim is made for the benefit of the members of Ngati Whakaue and in particular those of Ngati Whakaue descent who have an interest or estate in Ohinemutu Village at Rotorua bounded by the Utuhina Stream, Lake Road, Soundshell Parade at Lake Rotorua.

7. More generally, this consolidated claim is for the benefit of the constituent hapu, marae, whanau, and individuals of Ngati Whakaue.

WĀHANGA C - NGĀTI WHAKAUE

Tamarahi Pariri

Tītoko o te Rangi

Whakawhiti o te rā

Whakaāio whenua

8. He kupu whakataki ki te āhua o te rangatira pēnei i a Whakaue Kaipapa, he uri mokopuna o ngā kāwai rangatira i kawea te waka o Te Arawa mai i te kāinga o ō rātou nā mātua o Houmaitawhiti mā, nāna te aki ki ana nei uri "me kite atu he mate tarāwhare".

9. He whai a Tamatekapua mā i te kupu aki a Houmaitawhiti i te wehenga atu i Hawaiki pāmamao ahakoa he takahanga i te Korokoro o te Parata, ahakoa te riri a Ngātoroirangi i tau pai mai a Te Arawa ki Maketū. He toronga atu a te tamaiti me te pōtiki a Tamatekapua ki te kimi nōhanga mō rātou nā reira i te tae a Kahumatamomoe rāua ko Īhenga ki te tuawhenua o te puku o Te Ika a Māui. He tapaina a rāua i ngā maunga, ngā awa, ngā roto mai i Maketū ki Tongariro.

10. I te taenga atu i te wā o Whakaue kua riro i a Uenukukōpako, tana matua, te Motutapu a Tinirau (Mokoia). He hiahia nōna me whakatūhia he pā i runga i a Mokoia me ētahi atu wāhi o te ākau o Rotoruanui a Kahumatamomoe. Tae noa ki tana tamaiti a Tūtānekai, kua tū he pā ki Weriweri mōna. Nā Tūtānekai i whakaara mai te iwi kua tapaina ko Ngāti Whakaue.

11. Nō mua mai i te horonga o Mokoia kātahi ka mutu te riro i a Ngāti Whakaue a Pukeroa a Ōhinemutu tae noa ki te wā o ngā tautohetohe i waenganui i ngā iwi i mua i te kooti whenua o taua wā.

12. Ōrite ana ki ngā taha tini o ngā uri o Whakaue Kaipapa, kāore e herea ana ngā pūtakenga kōrero mōna ki te ao kikokiko o te ao tūroa, kāore hoki e whakawhāitihia ana ki Aotearoa anake[1].

13. Whakamārō atu ana ki te hōkaitanga, ki te whānuitanga o Te Moana nui a Kiwa, ki runga i ngā marae o Tangaroa rāua ko Hinemoana; o Ranginui rāua ko Papatūānuku.

[1] Stafford "A History of the Arawa People" Chapter 1

14. Ko te pātere e whai atu nei he mea tirotiro i ngā āhuatanga akiaki o te oranga, o te waihanga hoki i te tuakiri o ngā uri, mai i te wā o Houmaitawhiti, te tupuna o Whakaue, i noho atu rā i Hawaiki pāmamao. Kei konei tonu ēnei āhuatanga akiaki, kei ngā whakatipuranga o ēnei rā, ā, kei tā te whiti whakamutunga, kei te titiro whakamua anō ki ngā whakatipuranga o muri. Kua tuhia ki te pātere nei ngā tauira me ngā akoranga kua tāia, kua whakaūngia hoki ki te mauri o ngā whakatipuranga maha, heke iho i a Houmaitawhiti. Mārama ana ēnei tauira i roto i ngā uri o Whakaue, i te Whakaue o nāianei me te Whakaue o ngā rā kei te heke mai.

15. Hei te tīmatanga o te waiata e kī ana nā te noho apiapi i Rangiātea i whakatau ai rātou kia nuku ki tētahi atu pito o Te Moana nui a Kiwa noho ai. Nā runga i tēnei, me te mātauranga tuku iho i ngā wharaunga a Kupe mā mō te tini o ngā moutere i tawhiti, i tītoko i a Tamatekapua ki te whakarite i tētahi heke e huri ai te ao mō ngā uri whakatipu, e kore e hokia.

16. Nō te tāraitanga o te waka o Te Arawa me tōna whakarewatanga e te tohunga e Ngātoroirangi rāua ko te kaihautū ko Tamatekapua i mārō ai te heke o Te Arawa tāngata ki ngā takutai o Aotearoa. Nā rātou, nā te hunga i haere mai ai mā runga i te waka o Te Arawa i te taha o ēnei rangatira nui i whakanohonoho haere i ngā whenua o te taha moana me te tuawhenua o Te Ika a Māui.

17. He haere hira tonu taua haere. Ahakoa te karakia kikiwhara a Ngātoroirangi kia whakahekea a Te Arawa ki Te Korokoro o te Parata, hei ngaki i tōna mate ki ngā māmingatanga a Tamatekapua, nā tōna aroha pūmau ki tōna hoa wahine ki a Kearoa i puta ai rātou i te āwhā o tā Kearoa whakapiringa ki a Tamatekapua, ā i tau pai ai a Te Arawa me ōna tāngata ki Aotearoa.[2].

Tākina mai i te kawa tuatahi
mai i te toiora
he aha he aha
ko wai ko wai koe
he Atua he Atua
he tipua he tipua
Pūhourangi Pūhourangi
nāu nei ko Ohomairangi
he tangata he tangata
au au au e hā!

[2] Stafford: Chapter 3

Tēnei ko Ngāti Ohomairangi,
e noho ana i Hawaiki ki Rangiātea
ka tū te whakaaro
me whakatere i te tiritiri o te moana
ka whai i te ara whiti i te ara nuku
i tāwaehia e Kupe
ki Aotearoa

Kua kaha rā te maru
o te whenua i te tangata
kua auau ngā pakanga
a Tūmatauenga
tākina atu i raro
tākina atu i runga
ia Uenuku ia Uenukurangi
kia hōmai te oranga e

Ka tomo atu rā ki te
Punga nohenohe
me ngā toki,
kua hahau te rangi,
kua tūtauru ko taramainuku,
kua whatitiri he toka papawai
ko pūpūterangi, ko pūpū te whenua
he ōnewa
ka hāpai ake i ngā toki nei
Nā wai ngā toki nei
Nā Urutengangana
Nā Whakataupōtiki

Ka tuatua ea ki raro
he aro tawhito
he aro nōu e Tāne te wai
ko ēnei tauira nāu e
he tauira nui he tauira roa
kia puta ki te ao mārama
ka kī ake e Tia whakatūhia
he ahu mō ngā parapara
o ngā rākau
mō ngā konga hoki
kia rahirahi te tātā
ka tāreihia te waka nei

Nō te whaiouru
aokapuarangi te waka nei
he waka aha te waka nei
he waka tawhito
he waka tipua
he waka atua
he waka rangi
he waka tairanga

he tauira i ara mā Tamatekapua
he waka toiuru
he waka toirangi
he waka hei takapi i a Kiwa
i a Tangaroa i te rūpapa

Ka poua te tira waka e Ngātoroirangi
Ko te waka ka kīa ko Te Arawa
Rukuhia ko Tangaroa i te ao a io
Whakamaua kia tina
Whakamaua kia Atutahi
mā Rehua ko Atutahi
Whakataha nei i te Mangaroa
Whakamaua te waka
ki tai ki uta

Haere koutou i te ara moana o Kupe
Apuhia ngā tohutohu o te wānanga
o ngā ahurewa.
Whakaūhia ko Papatūānuku
hai kākahu mahana mō koutou
Whakareia Ranginui
kia tū tārewa ana
haere rā kaua e ware ki a mātau
ko te iwi ko Ngāti Ohomairangi tēnei
te tangi ake kia koutou

Ka whakaratahia e te Ariki
e Ngātoroirangi a Tangaroa
a Tāwhirimātea
otirā ngā mana atua o te mataora
hei arataki i te waka
kia whiti ki uta
ka tohuhia te ihu kia mau kia Atutahi
e
whakataha nei ki te Mangaroa
mārama ana te tere o te waka
nei o Te Arawa i te tiritiri o te moana

Ka hipa te wā e whakawhiti ana i te
moana
ka takakinohia e Tamatekapua
te wahine a te Ariki arā a Kearoa
ka tū te riri ki a Ngātotoirangi
Ka karanga ia ki a Tāwhirimātea
kia tukuna mai ana riri
Pūoi te hau matakōkeri
Pūoi te hau ngunguru
kia tō kia tō
kia riri kia riri

Ka heke te waka nei a Te Arawa
ki te Korokoro o te hamuti o te
waha pungapunga o te Parata
ka puta ngā riri katoa o te rangi
kātahi ngā hau
ka tātā i te waka
ka karanga a Ngātoroirangi
Ki a Tangaroa
kia pukepuke te moana maunga,
ā, ki te Maungaarongo
kia heke ki te Korokoro o te Parata

Ka huri āwhiowhio te waka
ki roto i te Korokoro o te Parata
tata tonu te ngahoro ki raro
ki a Tangaroa
ka whiua ētahi o ngā kai
o ngā taonga ki te wai
maikore ake te kete
a Rokiroki a Whakaotirangi
ka heke iho a Ngātoroirangi
i te hukahuka o te whare
ka kite i a Kearoa
ka tau te aroha kia ia e

I konei nā runga i tana aroha
kia Kearoa
ka whakatau te Ariki
ki ngā mana atua
kia marino te rangi
me te moana
ā, puta mai ana te waka
i te Korokoro o te Parata
ka rere tika i runga i te
aranuku ki uta
ka koa te iwi
Mai i Rangiātea ki Tahiti
areare ki Rarotonga
ki Whangaparāoa
ahu tonu ki Rangitoto
ki te whanga o te Waitematā
ka huri i Moehau
ka ū ki te Awa a te Atua
ka huri mai anō te waka
ka ū ki Maketū
ki te Kūrae o te Ihu o
Tamatekapua tērā
ka tau te waka ki te Awa i Akeake
Ka mihi ka tangi te iwi
ki te whenua ki a Aotearoa

Ko Ngāti Ohomairangi
i haere mai nei i runga.
i te waka nei i a Te Arawa
ka tau ki te taha moana
ki Maketū
ka tipu ka hua
ka tini ka marara
i te whenua
mai i Maketū ki Taupōnuiatia
e tau nei i konei
i Rotoruanuiakahu i tēnei rā

18. Pāorooro ana te maunga mai o Te Arawa e Tamatekapua i Hawaiki ki Aotearoa kia tau ki Maketū noho ai [3], puta i ngā wāhi katoa kua rongo i te hā o ngā iwi o Te Arawa. Ki tā ngā kōrero tuku iho o Te Arawa, kāore he aukatinga o ō rāua ko tōna teina ko Whakatūria aukaha, parapara hoki. Hei tauira āna mahi mō te māia o te tangata kāore e mauheretia ana ki ngā tikanga o te wā – ko te rironga e rāua ko tōna teina o te kuru whakamarumaru o Uenuku; ko te whakamahinga o ngā poutoti hei whakaora i a Whakatūria i te riri o Uenuku; ko te tono ki tōna tuakana ki a Tia kia tāraia te waka o Te Arawa; ko te māminga i a Ngātoroirangi kia haere mai ai mā runga i a Te Arawa, kaua mā runga i a Tainui, kia riro i a ia te tohunga ahurewa ki tōna waka; ko te moetāhae i te wahine a te tohunga ahurewa; ko te maunga mai o Whakaotirangi i runga i a Te Arawa[4]; ko te wharaunga mā runga i a Te Arawa ki ētahi atu wāhi o Te Ika a Māui me te taunahanaha haere; me te whakanōhanga e ōna uri o ngā whenua mai i Maketū ki Taupō.

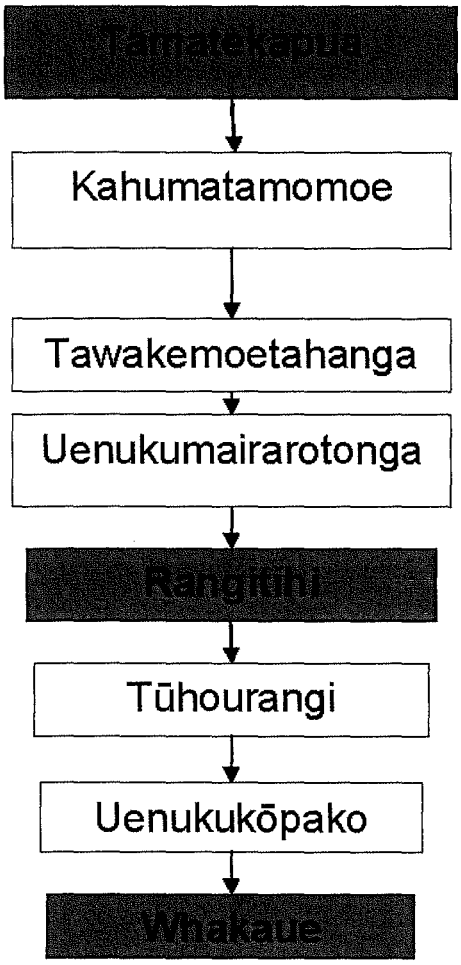
19. Mā te titiro noa ki ngā kōrero mō Tamatekapua ka kitea ōna parapara i ngā tāne o Te Arawa o ēnei rā. Ko te whakatoi, ko te koi hoki o te hinengaro, kia haere ake mā runga poutoti ki te whānako i te kuru whakamarumaru o Uenuku, kia whakapā atu anō ki te whaiāipo o Ngātoroirangi; ko te aurere me te māia, kia rere ki te whakaora i a Whakatūria, kia whakarite hoki i te heke o Ngāti Ohomairangi ki Aotearoa; ko te hīanga, ko te warawara hoki, arā te mate wahine, kia moetāhae i ētahi atu wāhine, kia tutū ai hoki te puehu i aua mahi pūremu.

20. I te utanga mai o Ngātoroirangi rāua ko Tia ki runga i te waka i uru mai ai te tohi whakatapu hei tauira mō ngā uri whakaheke o Te Arawa, arā te kawe tika i ngā kawa, me

[3] Ballara "Tribal Landscape Overview" Page 2 et seq
[4] Stafford: Chapter 1

te kawe tika anō i a koe i te tangata – kia āhua rite anō ki tā te tuakana tū, hāunga tā te teina.

21. E waru ngā whakatipuranga mai i a Tamatekapua ki a Whakaue Kaipapa. Anei te whakapapa [5] e whai atu nei:

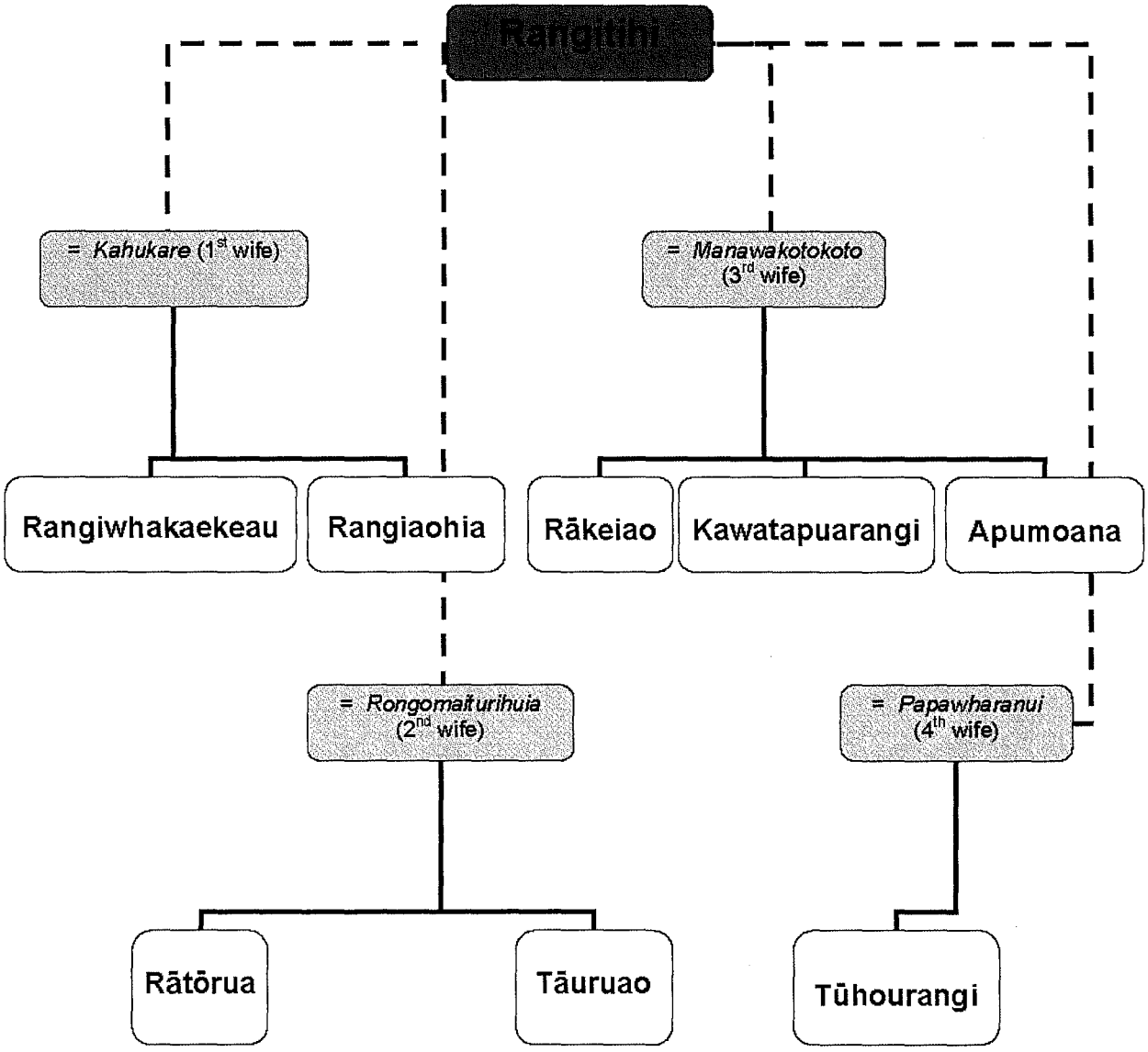


22. I te wā o Whakaue kua nōhia e ia ngā whenua i Rotorua, kua poua hoki tōna mana ki reira, pērā i ētahi o ōna whanaunga, ngā uri o tōna tupuna o Rangitihi, e toru whakatipuranga i mua i a ia.

23. Hei mokopuna tuarua a Whakaue, nā Uenukukōpako, ki a Rangitihi. Ko tōna tupuna ko Tūhourangi rātou ko ōna tuākana i mōhiotia ai ko "***Ngā pūmanawa e waru o***

[5] Stafford: Pages 56, 59 & 65

Rangitihi".[6] Anei e whai atu nei te whakapapa o ***"Ngā pūmanawa e waru o Rangitihi"***:[7]



[6] Ballara: Page 61-62
[7] Tenga Rangitauira personal whakapapa

24. Ko tētahi whakataukī anō mō Rangitihi e kōrero ana mō te māia me te upoko mārō o Te Arawa, e mōhiotia whānuitia ana, kia aronui ai ki ngā mate.

"Te upoko whakahirahira o Rangitihi i takaia nei ki te akatea" [8]

25. Nā ngā tamariki katoa a Rangitihi, nā ā rātou tamariki rānei, ka puta ko ngā iwi o te takiwā o Rotorua. Ko Whakaue, pērā i tōna pāpara i a Uenukukōpako, tētahi[9].

26. I te wā o Uenukukōpako, nā rāua ko tōna tuakana ko Rangiteaorere a Te Motu Tapu a Tinirau, arā a Mokoia, i raupatu. Nā reira i riro ai i a rāua te mana o te moana o Rotorua nui a Kahumatamomoe. Ko te pūtake o te whakaekenga o Mokoia ko te kainga o te kurī a Uenukukōpako, engari he takunga noa tērā kia taea ai te whakawhere i te hunga e noho ana i Mokoia, kia whakanōhia ai te takiwā o te moana o Rotorua e Uenukukōpako mā, rātou ko ōna uri, ko Rangiteaorere mā[10], kia riro ai i a rātou te mana o te whenua me te moana, ā taea noatia tēnei rangi.

27. Ka noho ngā uri o Uenukukōpako ki Mokoia, ko Whakaue tonu tētahi, ā ka tīmata ia ki te noho ki te taha uru o te moana o Rotorua ki te pā o Te Weriweri[11], he kāinga i whakatūhia e Uenukukōpako ki Waikimihia, ki Waiteti. I nōhia hoki e Whakaue ētahi kāinga i Kawaha me Te Koutu i waenganui i Waiteti me Ōhinemutu.[12]

28. I nōhia e ia rātou ko āna tamariki ngā whenua nā tōna pāpara nā Uenukukōpako rātou ko āna tama i raupatu, ā nā ngā tatau pounamu i hohou ai te rongo, i ū ai hoki te whanaungatanga i muri mai. Ka riro te pā o Te Weriweri i a Tūteaiti rāua ko Ngāraranui, ā kei taua takiwā tonu ngā hapū o Ngāti Tūteaiti me Ngāti Ngāraranui.[13] Ko tō rāua tuakana ko Tawakaheimoa i nuku ki te raki kia noho ki te takiwā ki Awahou. Ka puta i a ia ko Ngāti Rangiwewehi, i noho ki te pā i Puhirua, i Tarimano hoki i muri mai. Kei roto i te whakapapa e whai atu nei ngā tamariki a Whakaue, ko Tūtānekai tētahi :[14]

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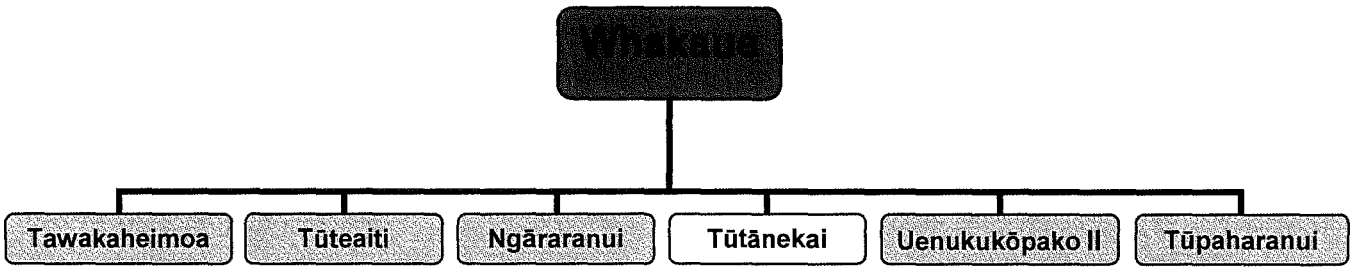
[8] Stafford: Page 57
[9] Ballara: Pages 90-91
[10] Ballara: Page 90
[11] Ballara: Page 91
[12] Ballara: Pages 92,107
[13] Ballara: Page 91
[14] Tenga Rangitauira personal whakapapa



29. I ū tonu te whakanōhanga o Mokoia e Whakaue rātou ko ōna uri ki te wā o tana tamaiti whakangākau o Tūtānekai, i moe i a Hinemoa, te tamāhine a Umukaria. Nā Tūtānekai me ōna pūkenga whakatangitangi puoro a Hinemoa i whakaipo kia kau atu ai ki Mokoia, ahakoa ngā hiahia o Umukaria[15]. Heoi anō, ahakoa ngā tautohenga i te tīmatanga, nāwai rā ka whakaae atu a Whakaue rāua ko Umukaria, ā ka ū te hono ki waenganui i ēnei hapū tae noa ki te pakanga i Te Puia i te tau 1800[16], i riro ai i a Ngāti Whakaue me ōna hapū ngā takutai o te uru o Rotorua, a Pukeroa me Ōhinemutu hoki.

30. I te wā o Tūtānekai, ka hinga a Pikiao, i noho ki te taha rāwhiti o Rotorua, ka tukuna atu ki te takiwā o Tarawera, ā mai i reira ki Rotoiti noho ai. Ko ō rātou whenua i Rotorua i nōhia e Tūhourangi me Wāhiao, i tīmata ai ki te whakanohonoho i te taha tonga o te moana i muri i te raupatutanga o Te Aorauru e Whakaue me Wāhiao. Ka tau te karangatanga o "Te Hope o Tūtānekai" ki runga i a Tūtānekai rātou ko ōna uri, ā ka noho rātou ki te takiwā tonu o te moana o Rotorua.[17]

31. Ko te aroha, e whakaatuhia ana i roto i te kōrero o Tūtānekai rāua ko Hinemoa, tētahi āhuatanga mau tonu i roto i ngā uri o Tūtānekai. E hia nei ngā wā kua whakarewa ake ngā hononga o te aroha ki runga ake i ngā tikanga o te wā. Ko te aroha o Whakaue mō Tūtānekai me tana manakohanga i a ia, ahakoa i whakaarohia ai nā Tūwharetoa kē; ko te aroha o Tunohopu mō tana tamaiti mō Taioperua i haere ai ia ki te tiki i tana tamaiti i a Tamamutu me Ngāti Tūwharetoa; ko te aroha hoki o Umukaria mō tana tamāhine mō Hinemoa i whakamauru ai i te mamae o āna mahi wāwāhi tahā, hei tauira katoa o te ahi kohara e kā mai ana i te whatumanawa o ngā uri o Whakaue, o te noho wātea hoki a ngā tāne me ngā wāhine o Ngāti Whakaue i raro i ngā tikanga o te wā.

[15] Stafford: Page 84
[16] Ballara: Pages 110,112,113. Stafford Chapter 25
[17] Stafford: Page 83,84

32. E kitea ana te nōhanga o Mokoia e Whakaue i roto i te mōteatea mō Te Kuruotemarama, tama a Mokonuiarangi, i hopukina ai i te whakaekenga o Mokoia e ngā iwi o Te Tai Tokerau me ā rātou pū.

> ***He hinganga ika kei te ākau***
> ***He paenga whakairo ki roto o***
> ***Kaiweka***
> ***Te nui ati ue***[18]

33. I mōhiotia ai nō Tūtānekai rātou ko ōna uri a Mokoia i te nōhanga o reira e tana tama e Te Ariariterangi, a Kawaha hoki i ngā kāinga tūturu o āna tama o Tunohopu rāua ko Pānuiomārama. Nā reira i kīa ai ko te mana o Tūtānekai ki te whenua i tīmata ki tapatapa atiu ki Waikimihia roua atu ki Kawaha.[19]

34. I te wā o Tūtānekai i tino puta ai a Ngāti Whakaue hei karangatanga hapū mō ngā uri o Whakaue, otirā o Tūtānekai ake.

35. Ko te kaha ki te whawhai, ki te whakangungu hoki i a rātou tētahi āhuatanga o Ngā Hope o Tūtānekai e mōhiotia whānuitia ana. Kāore i whakawhāitihia ngā mahi raupatu a Tūtānekai ki Rotorua anake, engari, i te taha o Wāhiao, i roua atu rātou ki Tarawera. I te whakapiringa atu o Wāhiao ki a Tūhourangi i taua wā i whati ai te haumi o mua i waenga i a Tūtānekai rāua ko Wāhiao, nā runga i te patunga o te tama a Tūtānekai, o Te Whatumairangi, e Wāhiao hei utu mōna i pūremutia ai tana wahine a Uruhina. Nāwai rā ka patua a Wāhiao e Te Hurungaoterangi, te tama a Te Whatumairangi, hei ngaki i te mate o tōna pāpara.[20]

36. Ko ngā pā o Ngāti Whakaue ko Weriweri, ko Te Whetengū ki Tihiotonga, ko Pukepoto, ko Te Koutu, ko Kawaha, ko Mātaipuku, ko Pukeroa, ko Ōhinemutu.[21]

37. Kei raro iho nei te whakapapa o Tūtānekai rātou ko ōna uri, arā ngā tūpuna o ngā hapū koromātua o Ngāti Whakaue e mōhiotia ana ināianei.:[22]

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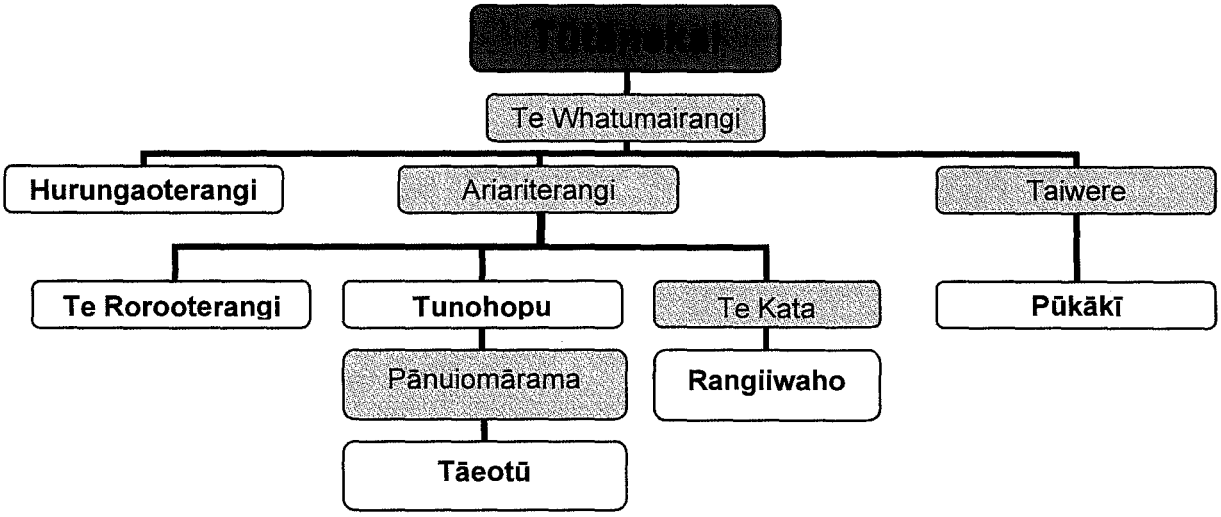
[18] Nga Moteatea Volume 1 Page 214: Stafford: Page 183
[19] Stafford Pages 20, 107
[20] Stafford: Page 21
[21] Stafford: Pages 21,111
[22] Rauawa Manahi personal whakapapa



38. Ko tētahi atu o ngā tamariki a Tūtānekai kāore i toiora mai i te ririhau o ngā pakanga ko Tamakuri i patua rā e Tūhourangi. E kīa ana te kōrero, i mate a Tūtānekai, ā i tāpukengia ai ki Weriweri.[23]

39. I te wā o Tunohopu i te noho a Ngāti Whakaue i waenganui i te kūrae o Kawaha me Weriweri, i runga hoki o Mokoia. Ko Ngāti Rangiwewehi i Awahou atu ki te awa o Ōhau. Ko Ngāti Pikiao i te taha rāwhiti o te moana roua atu ana ki ngā moana o te rāwhiti ki Rotoiti, ki Rotoehu me Rotomā. Mai i Mourea i te moana o Rotorua tae atu ki Ōwhatiura ko Ngāti Rangiteaorere me Ngāti Uenukukōpako, ā mai i Ōwhatiura ki Kawaha ko Tūhourangi.[24]

40. E tutū tonu ana te puehu i waenga i ngā iwi ka hingahinga tonu atu te tangata, ko Te Rangitakuku, tama a Pūkākī, rāua ko tōna tuahine ko Te Hapeterarau ētahi, i patua rā i tōna whakahokitanga atu ki tōna kōkara nō roto o Tūhourangi.[25]

41. Nō te pananga o Ngāti Tama i te takiwā tonu, ka nōhia e Ngāti Whakaue a Pukeroa me Ōhinemutu, ā ka whakangungua e rātou aua whenua i ngā huakitanga a Tūhourangi, kia riro pū ai i a rātou a Ōhinemutu, tae noa mai ki tēnei wā.

42. I noho tonu a Ngāti Whakaue ki tō rātou pito o Mokoia, ahakoa ngā wheiwheinga o Ngāti Uenukukōpako kia riro ai i a rātou, hei utu mō te patunga o ētahi o ō rātou

[23] Stafford: Page 96
[24] Stafford: Page 135
[25] Stafford: Page 136

rangatira, ā i tau rawa ai te puehu i waenga i ēnei iwi i te whakatūnga o te tatau pounamu e Te Kohu, tama a Tunohopu, i te tukunga o tana tamāhine hei wahine mā Te Whakarua, tama a Te Arakau, rangatira o Ngāti Uenukukōpako.[26]

43. I te wā o Tunohopu i pakanga rātou ki a Tamamutu o Tūwharetoa. Ko tētahi o aua pakanga i tū ki Kawaha, ki te kāinga o Tunohopu rātou ko tōna whānau, ko tōna hapū, i riro ai tana tama pōtiki a Taioperua i a Tamamutu, ā i mauria atu ai ki Taupō. Nā te kaha o tōna aroha ka kī atu a Tunohopu ki a Ngāti Whakaue māna e haere atu ki Taupō ki te tiki atu i tana tama, pērā i tōna tupuna i a Tamatekapua i haere ai ki te whakaora i tōna teina i a Whakatūria i ngā rā o nehe. Nā tēnei mahi i puta ai te whakataukī kua tuhia ki raro iho nei hei whakakapi i tēnei wāhanga o ngā kōrero. I urutomo pai atu ai a Tunohopu ki te pā o Tamamutu, ā nā tōna māia i whakawhiwhia ia e Tamamutu ki tana tama ki a Taioperua.

44. Kua whiria te mana wahine ki ngā kōrero o mua o Ngāti Whakaue. Hei whakamaumaharatanga ngā kōrero mō Te Pupū rāua ko Te Hoata, i haere mai ai mā raro i te whenua ki te mau mai i te ahi hei whakaora i tō rāua tungāne i a Ngātoroirangi, mō te kaha o tamawahine ki te tiaki i te whakaoranga o ngā whakatipuranga o muri. Ko ngā kōrero mō Whakaotirangi he mea tohutohu i a tātou kia āta tiakina te tū me te mana o tamawahine, me ia i pupuri ai ki tana kete tīnaku kūmara, mō te oranga o tōna whānau, o tōna hapū. Kei te kitea te kaha o ngā wāhine o Te Arawa ki te atawhai, ki te tiaki i ā rātou tāne me ō rātou whānau, i roto i ngā mahi raranga o te ao o Hineteiwaiwa, e hua ai i a ia te pono me te whanaketanga o Ngāti Whakaue i ngā rā kei te heke mai.

45. I ngā tau 1820 ka rere a Ngāti Whakaue ki Mokoia, me ngā iwi o Te Arawa i noho ki te takiwā o Rotorua me ētahi o ngā roto, hei kaupare i te whakaekenga a ngā tiora mau pū o Te Tai Tokerau, engari kāore i taea, ka horo tonu a Mokoia. Ka oraiti ētahi toiora hapū o te motu i "*Te Whare whaowhao o Te Ao Kapuarangi*"[27]. Hei whakamaumaharatanga whakaongaonga te whakataukī nei, nā Te Aokapuarangi te rahinga o mātou i ora ai ki tēnei rā.

46. E whakahuatia ana tēnei whakataukī i roto i te mōteatea a te mokopuna a Te Ao Kapuarangi mōna:[28]

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[26] Stafford: Page 145
[27] Stafford: Page 23
[28] Stafford: Page 180

Ka tanuku kei raro
Te tihi ki Mokoia
.....
E tū e whae he maihi wharenui
Nō Tamatekapua
.....
Kia pōwhiri koe te tini o Te Arawa
Koia i toa "Whare whaowhao"
.....
Ka ora ki te ao
Houhia e koe ki te rongo
.....

47. I te noho tonu a Ngāti Whakaue ki ngā whenua ki te taha uru o Rotorua i te taenga mai o ngā mihinare tuatahi me ngā tāngata whai o tauiwi i muri mai. I taua wā ko te rohe o Ngāti Whakaue mai i Waikimihia ki Waingaehe i te taha tonga o Rotorua. Ko Ngāti Ngāraranui i te takiwā ki Waiteti i Waikimihia, ko Ngāti Tūteaiti i Parawai i Ngongotaha, ā ko ētahi atu hapū matua ko Ngāti Pūkākī, ko Tunohopu, ko Te Rorooterangi, ko Rangiiwaho, ko Tāeotū, ko Hurungaoterangi, i ngā whenua mai i Ngongotaha ki Parawai, i Waikuta, i Kawaha, i Te Koutu, i Ōhinemutu, i Pukeroa, i Ngāpuna me Ōwhatiura.

48. Ko ngā kāinga matua o taua wā i tū ki Weriweri, ki Parawai, ki Waikuta, ki Waiohewa, ki Kawaha, ki Te Koutu, ki Utuhina, ki Ōhinemutu, ki Tihiotonga, ki Ngāpuna, ki Ōwhatiura.

49. Ko ngā pā matua o Ngāti Whakaue i tū ki Weriweri, ki Kawaha, ki Te Koutu, ki Ōhinemutu, ki Tihiotonga, ki Ngāpuna, ki Ōwhatiura.

50. Ko ngā rangatira nui o Ngāti Whakaue i te wā o te taenga mai o ngā mihinare tuatahi me tauiwi ko Haupapa, rātou ko Hāmuera Pango, ko Kiharoa Mataiawhea, ko Eruera Te Uremutu, ko Haerehuka, ko Pukuatua, ko Te Amohau, ko Te Kōwhai Tarahina.

51. Ahakoa ngā pakanga ki a Waharoa me tana ope, i toa ai i te pakanga o Mātaipuku[29] i Te Koutu, ka noho tonu a Ngāti Whakaue ki tōna pā ki Ōhinemutu. Ko te pūtake o taua pakanga ko te patunga o tētahi o ngā whanaunga o Te Waharoa e Haerehuka, i tutū ai te

[29] Stafford: Page 188

puehu ki Te Tumu i muri mai, ā kātahi ka riro anō i a Te Arawa a Maketū i a Ngāi Te Rangi.[30]

52. Nō Ngāti Whakaue, nō ngā rangatira kua whakahuatia ake nei, te mana motuhake o ngā whenua katoa mai i Waikimihia ki Whakarewarewa, mai i Whakarewarewa ki Waingaehe. Ko Ōhinemutu te "tāone" nui mō ngā mahi tāpoi whakawhanake i te kitenga mā te kaha haumanu o ngā waiariki e kume mai ai te ao ki ngā hōtera o Ngāti Whakaue me ngā tāngata whai tuatahi ka hangaia ki Ōhinemutu hei manaaki i a tauiwi, i ngā tāngata whai me ngā tūruhi.[31]

53. Ahakoa te noho kūpapa a Ngāti Whakaue hei "pononga" mā te karauna, kāore he take i tua atu i te kī taurangi kia puritia tonutia ai e Ngāti Whakaue āna tikanga e pā ana ki te mana mō ōna whenua, i whakaatahia ai i ngā rā i muri mai i te korenga o Ngāti Whakaue e whakaae ki te hokonga o ōna whenua, ki te wawaotanga mai hoki o te pūnaha pērā i te Kōti Whenua Māori.

54. Ko ēnei parapara katoa kua tukuna iho mai i ngā whakatipuranga ki a mātou o Ngāti Whakaue kia pēnei ai mātou i tēnei wā. Ko mātou anō ngā kōrero o mua o ō mātou tūpuna. Ko mātou e ora nei te whakatinanatanga o ō mātou tūpuna me ā rātou mahi katoa – ahakoa pai, ahakoa kino. Ko ō rātou hononga ki ēnei whenua, ki ēnei moana, ki ēnei ngāwhā, kei te manaakitia tonutia e Ngāti Whakaue i tēnei wā, ahakoa e mōhiotia ana, ahakoa kāore e mōhiotia ana, i te whānuitanga o tō rātou ao, te ao kikokiko me te ao wairua.

Hei aha noa ake i mate ai au ka tipu aku pākārito

[30] Stafford: Chapter 41
[31] Stafford: Chapter 43. Appendix D

PART C - NGATI WHAKAUE

Proud son of a proud nation
Pillar that upholds the heavens
You that allows the sun to shine
You that causes peace to reign on earth

8. These are phrases used to describe chiefs such as Whakaue Kaipapa, a descendant of the noble lines of chiefs who brought the canoe Te Arawa from the homeland of their forebears, of Houmaitawhiti and others, who encouraged his relations to "find a place where they may die a peaceful death".

9. Tamatekapua and his compatriots heeded the words of Houmaitawhiti when they left far distant Hawaiki, and although they descended for a time into the throat of the Parata, and were subjected to the anger of Ngatoroirangi, Te Arawa landed safely at Maketu. The children of Tamatekapua were sent to scout the land and seek an appropriate place for them to live, and so Kahumatamomoe and Ihenga arrived in the interior of the stomach of the great fish of Maui. They named the mountains, the rivers, and the lakes from Maketu to Tongariro.

10. By the time of Whakaue, his father Uenukukopako had taken control of Te Motutapu a Tinirau (Mokoia). He wanted to erect a pa (fortified village) on Mokoia, and also others around the shores of Lake Rotorua nui a Kahumatamomoe. When his son Tutanekai arrived, he had already built a pa at Weriweri. It was Tutanekai who raised his people to become the tribal force known as Ngati Whakaue.

11. Before the sacking of Mokoia, Ngati Whakaue had gained control over Pukeroa and Ohinemutu, and still held those areas when these issues were contested by different tribal groups before the land court of the day.

12. The beginnings of Whakaue Kaipapa, like the multi dimensions of his offspring, are not bound to the mere physicality of the natural world, nor are they limited to Aotearoa[32].

[32] Stafford "A History of the Arawa People" Chapter 1

13. They extend across the expanses of Te Moana nui a Kiwa within and without the spiritual and metaphysical domains of Tangaroa and Hinemoana; Ranginui and Papatuanuku.

14. The patere that follows explores the dynamics of existence and identity which have evolved from the time of Houmaitawhiti, the forebear of Whakaue and resident of distant Hawaiki. This dynamism lingers in the present day generations with a pointer to futures untold signified in the concluding melody. The patere records the patterns and lessons that have been outlined and embedded within the psyche of the many generations that have followed Houmaitawhiti. These patterns are evident and prevalent in the descendants of Whakaue, in the Whakaue of today and the Whakaue of the future.

15. The waiata commences with a reminder that out of a concern to avoid overcrowding in Rangiatea a monumentous decision to settle elsewhere in the Pacific was made. This concern, coupled with the cumulative knowledge of the abundance of far off places gleaned from the voyages of Kupe and others, catapulted Tamatekapua to fashion an expedition which was to shape the destiny of those who would follow irrevocably.

16. The fashioning of the canoe Te Arawa with its eventual launch accompanied by both tohunga and kaihautu Ngatoroirangi, and Tamatekapua respectively, led to the migration of the peoples of the Arawa canoe to the shores of Aotearoa. Those who accompanied these great leaders on the canoe Te Arawa also played a leading role in the settlement of the coastal areas and hinterland of Te Ika a Maui (The North Island).

17. The journey was eventful. However it was the enduring love of Ngatoroirangi for Kearoa his wife, that withstood the storm of her liaison with Tamatekapua, and which ultimately secured the safe arrival of the Te Arawa canoe and its occupants to Aotearoa, notwithstanding the summonsing of the wrath of the gods brought about by the powers of Ngatoroirangi in seeking retribution against Tamatekapua's deceptions by despatching the Te Arawa canoe to Te Korokoro o te Parata[33].

[33] Stafford: Chapter 3

Takina mai i te kawa tuatahi	*Lead from the beginning*
mai i te toiora	*Prom the fountain of existence*
he aha he aha	*What, what*
ko wai ko wai koe	*Who, who*
he Atua he Atua	*Divine, divine,*
he tipua he tipua	*Demigod, demigod*
Puhourangi Puhourangi	*Puhourangi from*
nau nei ko Ohomairangi	*you Ohomairangi*
he tangata he tangata	*Man man*
au au au e ha!	*It is, it is, so be it*
Tenei ko Ngati Ohomairangi,	*This the tribe Ohomairangi*
e noho ana i Hawaiki ki rangiatea	*residing at that Paradise Rangiatea*
ka tu te whakaaro	*The thought became*
me whakatere i te tiritiri o te moana	*to float on the crest*
ka whai ki te ara whiti i te ara nuku	*of the ocean, to follow the wake*
i tawaehia e kupe	*that moved and landed*
ki Aotearoa	*Kupe at Aotearoa*
Kua kaha ra te maru	*Very crowded the land*
o te whenua i te tangata	*became with people*
kua auau nga pakanga	*Battles of Tumatauenga*
a Tumatauenga	*became constant*
takina atu i raro	*Lead to the below*
takina atu i runga	*Lead to the above*
ia uenuku ia uenukurangi	*To the earth to the sky,*
kia homai te oranga e	*to give life*
Ka tomo atu ra ki te	*Enter the virgin forest with axes*
Punga nohenohe	*strike to the sky! stand to the grove!*
me nga toki,	*edged from the earth!*
kua hahau te rangi,	*thunder stone from the water*
kua tutauru ko taramainuku,	*tied to the sky*
kua whatitiri he toka papawai	*tied to the earth*
ko puputerangi, ko pupu te whenua	*from the earth.*
he onewa	*Take up the axes,*
ka hapai ake i nga toki nei	*Whose are these axes*
Na wai nga toki nei	*They belong to the Great Divinity*
Na Urutengangana	*They belong to Whakataupotiki*
Na Whakataupotiki	
Ka tuatua ea ki raro	*Fall that which is permitted to the*
he aro tawhito	*ground*
he aro nou e tane te wai	*An ancient concern your concern*
ko enei tauira nau e	*Tane*
he tauira nui he tauira roa	*The life giving water*
kia puta ki te ao marama	*These you have set*
ka ki ake e Tia whakatuhia	*Both big and <u>tall</u>*
he ahu mo nga parapara	*reaching out to the world of light*
o nga rakau	*Thus the statement of*
mo nga konga hoki	*Tia make ready a*
kia rahirahi te tata	*place for the chips and*

ka tareihia te waka nei	*the ashes of these timbers* *Chip thinly thus the canoe* *was hewed out*
No te whaiouru *aokapuarangi te waka nei* *he waka aha te waka nei* *he waka tawhito* *he waka tipua* *he waka atua* *he waka rangi* *he waka tairanga* *he tauira i ara ma Tamatekapua* *he waka toiuru* *he waka toirangi* *he waka hei takapi i a kiwa* *i a tangaroa i te rupapa*	*From the world of the* *forest to the clouds* *of the sky this the canoe* *a canoe of ancient* *a canoe of demigod* *a canoe of divine* *a canoe of sky* *a canoe of moving tide* *a set raised for Tamatekapua* *a canoe drawn from the forest* *a canoe drawn from the sky* *a canoe to traverse the ocean* *and Tangaroa to the calm below*
Ka poua te tira waka e Ngatoroirangi *Ko te waka ka kia ko Te Arawa* *Rukuhia ko Tangaroa i te ao a io* *Whakamaua kia tina* *Whakamaua kia Atutahi* *ma Rehua ko Atutahi* *Whakataha nei i te Mangaroa* *Whakamaua te waka* *ki tai ki uta*	*Ngatoroirangi set the* *course for the canoe* *now named Te Arawa (shark)* *submerge to Tangaroa Supreme* *Force* *to steadfastly hang on to* *Venus of Rehua Venus* *when it sides with the Milky Way* *Launch the canoe to the tide* *and be sure it wins land* *at its destination*
Haere koutou i te ara moana o Kupe *Apuhia nga tohutohu o te wananga* *o nga ahurewa.* *Whakauhia ko Papatuanuku* *hai kakahu mahana mo koutou* *Whakareia Ranginui* *kia tu tarewa ana* *haere ra kaua e ware ki a matau* *ko te iwi ko Ngati Ohomairangi tenei* *te tangi ake kia koutou*	*Go all of you follow* *the ocean trail of Kupe* *Consume the teaching* *of the high priest of* *the school of learning* *Use the earth as a* *cloak of warmth* *Let the sky hover eternal* *Farewell and do not* *forget us the saddened people* *Ngati Ohomairangi*
Ka whakaratahia e te Ariki *e Ngatoroirangi a Tangaroa* *a Tawhirimatea* *otira nga mana atua o te mataora* *hei arataki i te waka* *kia whiti ki uta* *ka tohuhia te ihu kia mau kia* *Atutahi e* *whakataha nei ki te Mangaroa* *marama ana te tere o te waka*	*The High Priest* *Ngatoroirangi came quickly to* *terms with the Divine Guardians* *of the universe* *to guide the canoe to its destination* *He set the bow to Venus* *by the Milky Way* *No clearer course of* *Te Arawa as it rode* *the crest of the ocean*

nei o Te Arawa i te tiritiri o te moana

Ka hipa te wa e whakawhiti ana i te moana
ka takakinohia e Tamatekapua
te wahine a te Ariki ara a Kearoa
ka tu te riri ki a Ngatotoirangi
Ka karanga ia ki a Tawhirimatea
kia tukuna mai ana riri
Puoi te hau matakokeri
Puoi te hau ngunguru
kia to kia to
kia riri kia riri

Time passed as they crossed the ocean
Tamatekapua forced an affair with Kearoa
the wife of the High Priest Ngatoroirangi
in his fury he called upon the Divine Guardian of the winds Tawhirimatea
Raise your howling winds
to gather to this point
to swirl to swirl
with fury with fury

Ka heke te waka nei a Te Arawa
ki te Korokoro o te hamuti o te waha pungapunga o te Parata
ka puta nga riri katoa o te rangi
katahi nga hau
ka tata i te waka
ka karanga a Ngatoroirangi
Ki a Tangaroa
kia pukepuke te moana maunga,
a, ki te Maungaarongo
kia heke ki te Korokoro o te Parata

By way of the jaws of the whirlpool Parata
to the throat descended Te Arawa
The sky Let forth all its fury
Ngatoroirangi now called the Divine Guardian of the deep
Tangaroa to create mountainous waves
Heed what you see, heed what you hear Down to the throat of the Whirlpool Parata

Ka huri awhiowhio te waka
ki roto i te Korokoro o te Parata
tata tonu te ngahoro ki raro
ki a Tangaroa
ka whiua etahi o nga kai
o nga taonga ki te wai
maikore ake te kete
a Rokiroki a Whakaotirangi
ka heke iho a Ngatoroirangi
i te hukahuka o te whare
ka kite i a Kearoa
ka tau te aroha kia ia e

The canoe swirled into the throat of the whirlpool Parata
almost to fall into the deep of Tangaroa
over the side into the water went some of the food, goods except the food basket of Whakaotirangi
then the High Priest sighted his wife Kearoa in her plight and became concerned

I konei na runga i tana aroha
kia Kearoa
ka whakatau te Ariki
ki nga mana atua
kia marino te rangi
me te moana
a, puta mai ana te waka
i te Korokoro o te Parata

The High Priest because of his concern for his wife Kearoa
turned to the Divine Guardians to calm the sky and the ocean
Thus Te Arawa came out of the whirlpool Parata

ka rere tika i runga i te	***and set its course***
aranuku ki uta	***to its destination***
ka koa te iwi	***Whence the people were happy***
Mai i Rangiatea ki Tahiti	***From Rangiatea to Tahiti***
areare ki Rarotonga	***Thence to Rarotonga and thence***
ki Whangaparaoa	***to Whangaparaoa from there***
ahu tonu ki Rangitoto	***to Rangitoto and to the harbour of***
ki te whanga o te Waitemata	***Waitemata***
ka huri i Moehau	***round the point at***
ka u ki te Awa a te Atua	***Moehau to Te Awa a te Atua at***
ka huri mai ano te waka	***Matata and back to Maketu known***
ka u ki Maketu	***as the bridge of the nose of***
ki te Kurae o te Ihu o	***Tamatekapua***
Tamatekapua tera	***and so settled***
ka tau te waka ki te Awa i Akeake	***the people wept***
Ka mihi ka tangi te iwi	***in joy for this land Aotearoa***
ki te whenua ki a Aotearoa	
Ko Ngati Ohomairangi	***It is the tribe Ohomairangi***
i haere mai nei i runga.	***(awaken from the sky)***
i te waka nei i a Te Arawa	***who came on the canoe***
ka tau ki te taha moana	***Te Arawa***
ki Maketu	***they landed***
ka tipu ka hua	***and settled at Maketu***
ka tini ka marara	***by the sea***
i te whenua	***they multiplied and scattered***
mai i Maketu ki Tauponuiatia	***over the land from Maketu to Taupo***
e tau nei i konei	***The descendants of those early***
i Rotoruanuiakahu i tenei ra	***forebears***
	settled in Rotorua and are there to
	this day

18. The fact that Tamatekapua commanded the canoe Te Arawa from Hawaiki to Aotearoa landing at and occupying Maketu[34] reverberates throughout the many realms that the peoples of Te Arawa have touched. His temerity and ingenuity and that of his younger brother Whakaturia knew no boundaries as the history of Te Arawa recalls. Their roles in acquiring the breadfruit of Uenuku, in the use of stilts by Tamatekapua to rescue his younger from Uenuku's revenge, in engaging his elder Tia to build the canoe to be called Te Arawa, in pre-empting Ngatoroirangi's original intention to voyage on the canoe Tainui so that he would have the most powerful of High Priests as part of his contingent on the canoe Te Arawa, in engaging in an inappropriate affair with the wife of the High Priest, in ensuring Whakaotirangi came on the canoe Te Arawa[35], in voyaging to other

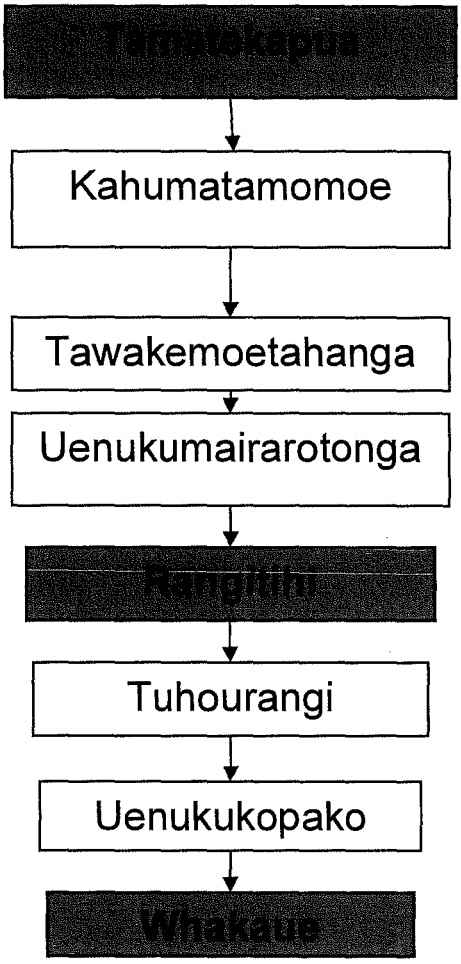
[34] Ballara "Tribal Landscape Overview" Page 2 et seq
[35] Stafford: Chapter 1

parts of Te Ika a Maui on the canoe Te Arawa thereby naming places visited by him and finally by his descendants occupying all of the land from Maketu through to Taupo all examples of the audacity of one unbounded by convention .

19. One only has to look at the stories about Tamatekapua to realise that many of the attributes he had are still prevalent among Te Arawa (men) today. There is the cheek and ingenuity of using stilts to steal the breadfruit of the Tohunga Uenuku and the lover of the Tohunga Ngatoroirangi; there is the passion and valour of rushing to Whakaturia's rescue and engineering Ngati Ohomairangi's subsequent migration to Aotearoa; there is the mischief and amorous nature of the numerous illicit affairs he had and the rippling effects of those affairs that he left in his wake.

20. With Ngatoroirangi and Tia secure within the realms of the waka you have the more serious tohunga aspects cemented within the evolving peoples of Arawa, conducting protocols properly; appropriate behaviour – somewhat similar to a tuakana role as opposed to that of a teina.

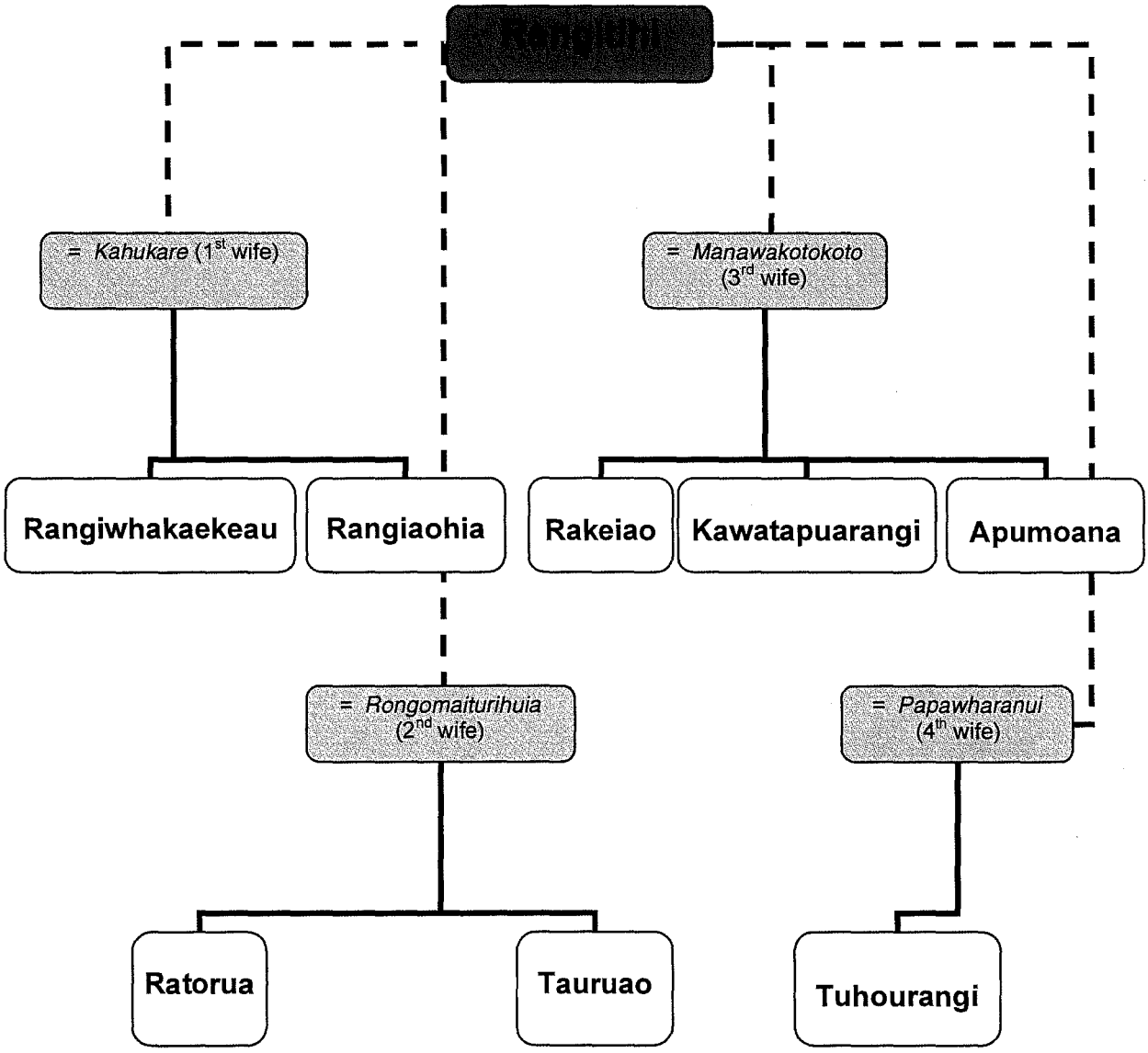
21. Whakaue Kaipapa is descended eight generations from Tamatekapua. His genealogy [36] is as follows:



22. By Whakaue's time he occupied lands at Rotorua and had established his mana as others of the descendants of the children of his ancestor Rangitihi [37] three generations above him had done.

23. Whakaue was, through Uenukukopako, a great grandson of Rangitihi. His grandfather Tuhourangi together with Tuhourangi's older siblings were known as ***"nga pumanawa e waru o Rangitihi"***.[38] The genealogy showing the ***"eight beating hearts"*** of Rangitihi is as follows:[39]

[36] Stafford: Pages 56, 59 & 65
[37] Ballara: Page 60
[38] Ballara: Page 61-62
[39] Tenga Rangitauira personal whakapapa


Rongotini
= Kahukare (1st wife)
= Manawakotokoto (3rd wife)
Rangiwhakaekeau
Rangiaohia
Rakeiao
Kawatapuarangi
Apumoana
= Rongomaiturihuia (2nd wife)
= Papawharanui (4th wife)
Ratorua
Tauruao
Tuhourangi

24. The other famous proverb of Rangitihi identifies the well known trait of Te Arawa as to its stubbornness in the face of adversity

> ***"Te upoko whakahirahira o Rangitihi i takaia nei ki te akatea"*** [40]
> ***The illustrious head of Rangitihi which was bound with the akatea vine.***

25. All of Rangitihi's children or their children in turn were the founders of important descent groups of the Rotorua area. Whakaue like his father Uenukukopako was one of those[41].

26. During the time of Uenukukopako both he and his cousin Rangiteaorere conquered Te Motu Tapu a Tinirau (Mokoia Island) which was the key to the control of the lake of Rotoruanuiakahumatamomoe (Lake Rotorua). The incident, the eating of Uenukukopako's dog, which led to the invasion of Mokoia Island was but an excuse to prevail upon those living on the island and thus allowing Uenukukopako and his descendants, amongst others including Rangiteaorere[42], to begin both the occupation and control of the Rotorua area particularly around Lake Rotorua which for many generations the peoples of Uenukukopako have enjoyed to the present day.

27. Uenukukopako's descendants in particular Whakaue lived on Mokoia Island and he began his occupation of the western shores of Lake Rotorua at Te Weriweri Pa[43], a kainga established by Uenukukopako, at Waikimihia, Waiteti. Whakaue also occupied areas at Kawaha and Te Koutu between Waiteti and Ohinemutu.[44]

28. His habitation patterns and those of his children followed the expanse of influence obtained principally through the conquests of Uenukukopako and his sons which were then cemented by relationships that endure. Tuteaiti and Ngararanui took occupation of Te Weriweri Pa and this area even today is recognised as that of the hapu of Ngati Tuteaiti and Ngati Ngararanui.[45] Their older brother Tawakaheimoa moved further north to occupy the Awahou area becoming the eponymous ancestor of Ngati Rangiwewehi

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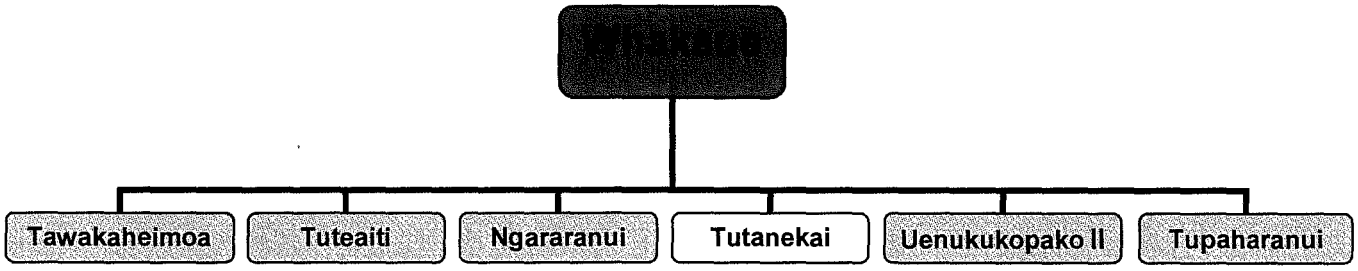
[40] Stafford: Page 57
[41] Ballara: Pages 90-91
[42] Ballara: Page 90
[43] Ballara: Page 91
[44] Ballard: Pages 92,107
[45] Ballard: Page 91

who occupied Pa sites at Puhirua and later Tarimano. The genealogy that follows shows the children of Whakaue including Tutanekai :[46]



29. The occupation of Mokoia Island by Whakaue and his descendants continued in to the era of his favoured son Tutanekai who, as is well known, married Hinemoa the daughter of Umukaria. Hinemoa was wooed to Mokoia Island by Tutanekai and his musical charms, against the wishes of Umukaria[47], but notwithstanding the initial opposition the resulting marriage, finally approved by both Whakaue and Umukaria, cemented a strong bond and association between these two groupings which could not be broken until as late as the 1800 battle at Te Puia[48] where, in that encounter, Ngati Whakaue and its hapu seized the western shores of Lake Rotorua including Pukeroa and Ohinemutu.

30. At the time of Tutanekai the settlement patterns saw Pikiao, erstwhile settlers on the eastern shores of Lake Rotorua, move to occupy the Rotoiti region after being despatched by conquest initially to the Tarawera region. The areas occupied by Pikiao became subsequently controlled by Tuhourangi and Wahiao who began their occupation of the southern lakes area after the conquest of Te Aorauru by both Whakaue and Wahiao. Tutanekai and his descendants became known as "Te Hope o Tutanekai" settling in the immediate environs of Lake Rotorua.[49]

31. The capacity to love, as demonstrated in the story of Tutanekai and Hinemoa, is an enduring characteristic of Tutanekai's progeny. Time and again the ability for such bonds of love to rise above what was deemed to be right at the time is also demonstrated. The love and acceptance of Tutanekai by his father Whakaue, despite the question of whether or not he was actually Tuwharetoa's son; Tunohopu's unquestioned love for his son Taioperua which drove him to retrieve him from Tamamutu and Ngati Tuwharetoa; and

[46] Tenga Rangitauira personal whakapapa
[47] Stafford: Page 84
[48] Ballara: Page 110,112,113; Stafford Chapter 25
[49] Stafford: Pages 83,84

the love of Umukaria for his daughter Hinemoa that rose above the hurts of her disobedience, are all examples of the flame of passion that burns within the being of the progeny of Whakaue and illustrates that the men and women of Ngati Whakaue are not bounded by convention.

32. The occupation of Mokoia Island by Whakaue is recognised in the lament to Te Kuruotemarama, the son of Mokonuiarangi, who was captured during the fall of Mokoia Island during the musket raids of the northern tribes to the Rotorua region.

He hinganga ika kei te akau	***Like beached fish on the shore***
He paenga whakairo ki roto o	***Were the fallen tattooed brigade***
Kaiweka	***Of Ngati Whakaue at Kaiweka***
Te nui ati ue[50]	

33. Tutanekai and his descendants were recognised as living on Mokoia Island by the fact of the residence of his son Te Ariariterangi there, and at Kawaha by the fact of the permanent residence there of his sons Tunohopu and Panuiomarama. It was thus said that the influence of Tutanekai extended from the most north western boundary marker at Waikimihia extending as far as Kawaha.[51]

34. It is during the times of Tutanekai that the name Ngati Whakaue became both prominent and recognised as the umbrella title covering the independent entity of Whakaue's, and more particularly Tutanekai's descendants.[52] .

35. The ability to fight and defend themselves and their people is a renowned characteristic of Nga Hope o Tutanekai. Tutanekai's conquests were not limited to the Rotorua region but, in a combined effort with Wahiao, extended as far as Tarawera, with Wahiao at that time forming an alliance/axis with Tuhourangi which led to the eventual shattering of the early alliance between Tutanekai and Wahiao when Tutanekai's son, Te Whatumairangi, was killed by way of revenge by Wahiao for his illicit affair with Uruhina, Wahiao's wife. In turn Te Hurungaoterangi, son of Te Whatumairangi, avenged his father's death by killing Wahiao.[53]

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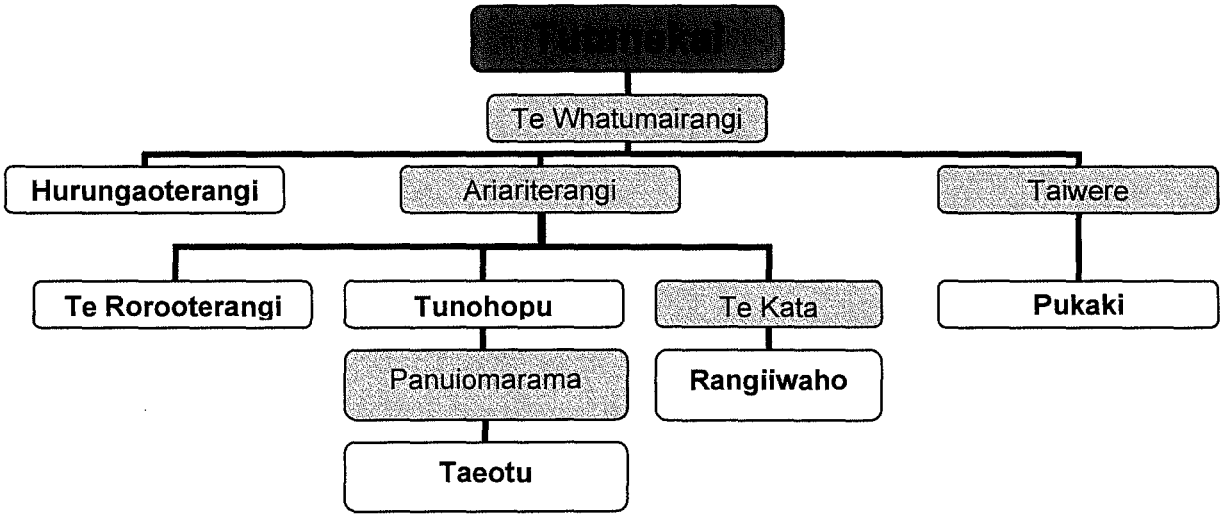
[50] Nga Moteatea Volume 1 Page 214: Stafford: Page 183
[51] Stafford: Pages 20,107
[52] Stafford: Pages 21,111
[53] Stafford: Page 21

36. The Pa sites occupied by Ngati Whakaue included Weriweri, Te Whetengu at Tihiotonga, Pukepoto, Te Koutu, Kawaha, Mataipuku, Pukeroa and Ohinemutu.[54]

37. The genealogy of Tutanekai and his descendants is outlined as follows showing the major ancestors after whom, in particular, the now well known "Koromatua hapu" of Ngati Whakaue are named:[55]



38. Another of Tutanekai's children was not spared from the ravages of war as evidenced by the killing of his son Tamakuri by Tuhourangi. Tutanekai is said to have died and to have been buried at Weriweri.[56]

39. At the time of Tunohopu Ngati Whakaue lived between Kawaha Point and Weriweri as well as on Mokoia Island. Ngati Rangiwewehi were from Awahou to the Ohau channel, whilst Ngati Pikiao occupied the eastern side of the lake extending back to the eastern lakes of Rotoiti, Rotoehu and Rotoma. From Mourea on Lake Rotorua as far as Owhatiura generally belonged to Ngati Rangiteaorere and Ngati Uenukukopako, and between Owhatiura as far as Kawaha was occupied by Tuhourangi.[57]

[54] Stafford: Page 21,111
[55] Rauawa Manahi personal whakapapa
[56] Stafford: Page 96
[57] Stafford: Page 135

40. Intervening skirmishes continued resulting in deaths on both sides, not the least of which were the deaths of Te Rangitakuku, a son of Pukaki, and his younger sister Te Hapeterarau, when she was taken back by her mother who was of Tuhourangi descent.[58]

41. The eventual occupation of Pukeroa and Ohinemutu followed when Ngati Whakaue were able to move Ngati Tama out of the immediate region resulting in the battle at Te Puia Pa, and Ngati Whakaue were able to withstand the attacks by Tuhourangi and became the occupiers of Ohinemutu, from where they have never been displaced.

42. Ngati Whakaue continued to occupy their part on Mokoia Island even though attempts were made by Ngati Uenukukopako, principally as a result of wishing to seek revenge for the deaths of their leaders, to gain control of these areas, with peace finally being achieved by Tunohopu's son, Te Kohu, making peace on behalf of Ngati Whakaue, and offering his daughter as a wife for Te Whakarua, son of Te Arakau, a chief of Ngati Uenukukopako.[59]

43. During Tunohopu's time many battles took place with Tamamutu of Tuwharetoa, one battle taking place at Kawaha, where Tunohopu lived with his family and hapu, which saw the eventual capture of his youngest son Taioperua, by Tamamutu, and his being taken back to the Taupo region. Tunohopu, besieged with grief, prevailed upon Ngati Whakaue that he would venture to Taupo to regain his son, not unlike his tupuna Tamatekapua in seeking recovery of his younger Whakaturia in olden times. From this incident was born the proverb given below in closing this part of the statement of claim. Tunohopu was successful in gaining entry to Tamamutu's pa, with his audacity being rewarded with the good grace of Tamamutu by the return of his son Taioperua.

44. The mana and status of women is woven intimately in the histories of the people of Ngati Whakaue. Memories of Te Pupu and Te Hoata who travelled underground bearing warmth to ensure the survival of their brother Ngatoroirangi remind us of the importance of the female dimension in protecting the survival of future generations. The histories around Whakaotirangi speak to us about the need to protect those things that are important for maintaining the role and status of women, as it was she who protected her kete full of the precious tinaku kumara, for the sustenance of her whanau and hapu. This

[58] Stafford: Page 136
[59] Stafford: Page 145

capacity of Te Arawa women to nurture and protect their men and families while maintaining their own femininity is captured in their prowess as weavers in the crafts of the realm of Hineteiwaiwa, as she also ensures the integrity and fertility of Ngati Whakaue's future.

45. In the 1820's Ngati Whakaue, like other tribes of Te Arawa who occupied the Rotorua Lakes District, took refuge on Mokoia Island to repulse the advance of the northern tribal musket marauders, but they were unable to do so resulting in the fall of Mokoia Island, with the saving of the remnants of the tribal groups on the island being effected by "*Te Whare whaowhao o Te Ao Kapuarangi*"[60]. The whakatauaki is a poignant reminder that it is because of Te Aokapuarangi that many of us are here today.

46. The reference to this saying is recorded in the lament by Te Ao Kapuarangi's granddaughter to her as follows:[61]

Ka tanuku kei raro	***The falling of the crest of Mokoia***
Te tihi ki Mokoia	
.....	***You o mother didst bestride the***
E tu e whae he maihi wharenui	***bargeboard of the great house***
No Tamatekapua	***called Tamatekapua***
.....	
Kia powhiri koe te tini o Te Arawa	***You beckoned the many of Te***
Koia i toa "Whare whaowhao"	***Arawa hence the saying "The brim***
.....	***full house"***
Ka ora ki te ao	
Houhia e koe ki te rongo	***And were saved to the world for***
.....	***ever holding a lasting peace***

47. Ngati Whakaue's continued occupation of the western shores of Lake Rotorua continued through to the arrival of the early missionaries and later settlers. At this time the extent of the Ngati Whakaue domain was from Waikimihia through to Waingaehe on the southern shores of Lake Rotorua. The hapu of Ngati Ngararanui occupied the Waiteti region at Waikimihia, whilst Ngati Tuteaiti occupied the area at Parawai in Ngongotaha, with the other major hapu of Ngati Pukaki, Tunohopu, Te Rorooterangi, Rangiiwaho, Taeotu, Hurungaoterangi, claiming to lands from Ngongotaha through to Parawai, Waikuta, Kawaha, Te Koutu, Ohinemutu, Pukeroa, Ngapuna and Owhatiura.

[60] Stafford: Page 23
[61] Stafford: Page 180

48. The principal kainga of the time were those situated at Weriweri, Parawai, Waikuta, Waiohewa, Kawaha, Te Koutu, Utuhina, Ohinemutu, Tihiotonga, Ngapuna and Owhatiura.

49. The principal pa occupied by Ngati Whakaue were at Weriweri, Kawaha, Te Koutu, Ohinemutu, Tihiotonga, Ngapuna and Owhatiura.

50. The principal leaders of Ngati Whakaue at the time of the arrival of the early missionaries and settlers included Haupapa, Hamuera Pango, Kiharoa Mataiawhea, Eruera Te Uremutu, Haerehuka, Pukuatua, Te Amohau, Te Kowhai Tarahina.

51. Even the wars with Waharoa and his party, who were successful at the battle of Mataipuku[62] at Te Koutu, were not sufficient to remove Ngati Whakaue from its stronghold in Ohinemutu. The attack was caused by the actions of Haerehuka in dispensing with a relative of Te Waharoa, which in turn led to the battle at Te Tumu and the eventual recapturing of Maketu by Te Arawa from Ngai Te Rangi.[63]

52. Ngati Whakaue, under their chiefs abovenamed, held complete authority over all lands extending from Waikimihia through to Whakarewarewa, and from Whakarewarewa through to Waingaehe. Ohinemutu was the main "town" for the burgeoning tourism industry for this area once it was recognised that the therapeutic qualities of the geothermal would be an attraction to the world with hotels, owned by both Ngati Whakaue and early settlers, and built in Ohinemutu to cater for the new arrivals, both settler and tourist.[64]

53. Notwithstanding Ngati Whakaue's association with the crown as "loyal subjects", this was never to be other than for the assurance and guarantee of Ngati Whakaue maintaining it's tikanga in respect of mana over it's domain, later reflected in Ngati Whakaue's opposition to any form of sale of it's land, as well as the intervention of a system such as the Native Land Court.

54. All of these attributes have been passed down through the generations and make us who we are as Ngati Whakaue. We are our history. We are the living and breathing

[62] Stafford: Page 188
[63] Stafford: Chapter 41
[64] Stafford: Chapter 43: Appendix D

manifestations of our tupuna and everything that they did – both good and bad. And the connections that they had with these lands and with their moana, within their ngawha, is a connection that Ngati Whakaue hold and nurture today, both consciously and unconsciously, in the many realms of their existence, both tangible and intangible.

Hei aha noa ake i mate ai au ka tipu aku pakarito

(It does not matter if I die I am survived by my descendants)

PART D. PRINCIPLES OF THE TREATY

55. Without limiting the Treaty the claimants assert that the following are among the principles of the Treaty each of which they say is relevant to the present claim.

Property

56. A fundamental principle of the Treaty is the protection and preservation of Maori property and taonga.[65]

Fiduciary Duty

57. A fundamental principle of the Treaty of Waitangi is that the Crown owes a fiduciary duty to act reasonably and with the utmost good faith to Maori. Such a duty includes the obligations[66]:

58. To use any right of pre-emption to protect Maori from excess purchases, and not to use it to stifle competition for Maori land so as to deprive Maori of a fair price.

59. The duty not to use other unfair means when dealing with Maori.

60. The obligation to abide by the Christian and traditional Maori values the Treaty emphasised.[67]

Custom

61. A fundamental principle of the Treaty is the preservation of Maori custom including an ongoing distinctive existence as a people albeit adapting as time passed and the combined society developed.[68]

62. Following from the above principles on property and custom are the further related principles:

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[65] *New Zealand Maori Council v Attorney General* [1994] 1 NZLR 513, PC, 517
[66] *Te Runanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301, CA 305-306
[67] *Te Roroa Report*, p30
[68] *Taiaroa v Minister of Justice* (unreported decision, HC Wellington, CP 99/94, McGechan J, 29 August 1994 at p69)

i. Maori were and are to be protected not only in the possession of their property but in their right to control such property in accordance within their own customs and having regard to their own cultural preferences[69] and to have protected their tino rangatiratanga being the full authority, status and prestige with regard to Maori possessions and interests.[70]

ii. The preservation for Maori of their customary title.[71]

Economic Protection

63. Flowing out of the foregoing is the fundamental principle that the Crown owes a duty to protect preserve and promote the economic position of Maori. This includes:

a) A duty on the Crown to ensure that Maori were and are left with sufficient land and other resources for their maintenance and support and livelihood and that each hapu maintained a sufficient endowment for its foreseen needs.[72]

b) Such endowment is not just an endowment sufficient to survive but sufficient to profit and to prosper an included the facility to fully exploit such land and resources.[73]

c) Maori have a right to develop and expand such resources using modern technologies and are not to be consigned to those technologies known at the time of the Treaty.[74]

d) The Crown does not take advantage of the poverty of Maori, created at least in part by the Crown, by acquiring land from Maori who are selling just to but food to survive.

Good Government

64. A fundamental principle of the Treaty is that Maori are entitled to the benefit of good government. Such good government should exhibit itself in at least the following ways:

[69] *Motunui-Waitara Report* 2 ed. 1989 p51
[70] *Manukau Report*, p67
[71] *Te Runanga O Te Ika Whenua Inc. v Attorney-General* [1994] 2 NZLR 20, CA 24; Orakei Report p135
[72] *Orakei Report*, p147
[73] *Muriwhenua Fishing Report*, p194
[74] *Muriwhenua Fishing Report*, p220; *Ngai Tahu Sea Fisheries Report*, pp253-254

a) Equal treatment by the law and by all Government Agencies (except to the extent necessary to redress past injustices and the results of that in which event more favourable treatment is appropriate).[75]

b) Matters affecting Maori land should be determined by Maori. Maori should be permitted to maintain their own way of reaching agreements.[76]

c) Conditions that would enable Maori, despite settlement, not only to survive but to progress because of it.[77]

d) Maori would be and are now entitled to peace and law and order.[78]

e) Protection of particular Maori interests.[79]

f) A duty not to use any powers of compulsory acquisition of Maori land or resources without first consulting those Maori affected and without negotiating genuinely with them as to the purchase or, at least, paying proper compensation.[80]

g) An inability to avoid the Crown's obligations by any delegation of the Crown's duties under the Treaty.[81]

Overriding Principles

65. An overarching principle of the Treaty is that the Crown should deal with Maori in an honourable an good faith way, and should ensure the protection and prosperity of Maori as a people including their economic, physical, spiritual and cultural wellbeing.

66. Another overarching principle of the Treaty is that the Crown should remedy past breaches in all but very special circumstances.[82]

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[75] Note the Labour Government Statement of 1989-Principle (C)
[76] *Taranaki Report* pp 281-282
[77] Muriwhenua Fishing Report, p194
[78] *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 CA at 715 per Bisson J
[79] *Manukau Report*, p69
[80] *The Ngati Rangiteaorere Repor* pp47-48; *Te Runanganui O Te Ika Whenua Inc Soc v Attorney-General* [1994] 2 NZLR 20, CA at 24
[81] *Motunui-Waitara Report* and the *Manukau Report*, p73
[82] *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, CA, 664-665

PART E. CROWN TREATY BREACHES

A) COMPACTS AND RELATIONSHIPS WITH THE CROWN

i) Te Komiti Nui o Rotorua

Breach

67. The Crown disregarded the Rangatiratanga of Ngati Whakaue by causing, promoting and assisting to undermine Te Komiti Nui o Rotorua and thereby breached Article 2 of the Treaty.

68. The Crown breached the principles of the Treaty of Waitangi by failing to act in good faith towards Ngati Whakaue by causing, promoting and assisting to undermine Te Komiti Nui o Rotorua in contravention of the guarantee of active protection of nga hapu o Te Arawa, and in particular nga hapu o Ngati Whakaue, over their lands, estates and esteemed institutions.

Particulars

69. Ngati Whakaue assert that prior to 1840 they held, exercised and were recognised as having rangatiratanga over their tribal estate, their land, waterways and natural resources including the abundant geothermal resources of ngawha, puia and waiariki in accordance with their own tikanga.

70. Te Komiti Nui evolved during the 1860's and 1870's as a response by the peoples of Te Arawa to attempts by the Crown to adjudicate and manage their lands and resources through the introduction of the Native Land Court.[83] During this period Ngati Whakaue's land remained outside the sphere of the Crown's influence with Te Komiti Nui acting as an adjudicator of title and settling disputes between hapu.

71. Te Komiti Nui was resolved that it, rather than the Native Land Court would determine matters of ownership and that its authority be recognised by the Crown.[84] Te Komiti Nui was a manifestation of Ngati Whakaue's assertion of tribal independence or tino rangatiratanga which is guaranteed under Article 2 of the Treaty of Waitangi.

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[83] Rose, p18
[84] Locke, p.48

72. Despite initial support by the Crown for the exercise of rangatiratanga through Native Councils, in breach of Te Tiriti o Waitangi and contrary to the tino rangatiratanga o Te Arawa, the Crown actively sought to subjugate Te Komiti Nui within and beneath its law through the system of the Native Land Court, land proclamations, and related legislation.

73. Almost immediately after the establishment of the Court in Rotorua, the Crown actively sought to undermine Te Komiti Nui, which rendered Ngati Whakaue helpless to manage or control their tribal estate.

Facts

74. Ngati Whakaue claim that prior to 1840 they held, exercised and were recognised as having rangatiratanga over their tribal estate, their land, waterways and natural resources including the abundant geothermal resources of ngawha, puia and waiariki in accordance with their own tikanga.

75. In February 1872 at the opening of Tamatekapua meeting house the hui concluded that "a permanent Runanga should be elected by themselves, who should take cognisance of all land disputes and who should finally settle them".[85] The Komiti was established and comprised of about 60 men selected from various hapu. They began to hold enquiries into intersecting land claims, with a view to ratification by the Native Land Court.[86]

76. The Komiti Nui o Rotorua was determined that it, rather than the Native Land Court, would determine matters of ownership and that its authority be recognised by the Crown.[87]

77. In 1873 Donald McLean, the Native Minister, proposed for the establishment of elected Native Councils. McLean proposed that these councils would have the authority to impose local by-laws and "to adjudicate on land ownership", subject to confirmation by the Native Land Court.[88]

78. On 21 May 1874 Taekata Rawiri informed McLean that Ngati Whakaue had decided to place their lands under the control of a committee.[89]

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[85] Armstrong, p.99
[86] Ward, p 51.
[87] Locke, p 48.
[88] Rose, final, p 25.
[89] 21 May 1874, letter no.3210, MA Register 1874. NA.

79. On 12 February 1876 Paora Te Amohau objected to government attempts to initiate surveys in Maketu describing it as "a net sent by Government. It will swallow up all your land" and stated that "It is a fixed word of Ngati Whakaue's- all surveys over the Arawa Lands shall cease absolutely".[90]

80. On April 1879 Te Komiti Nui published a notice in the New Zealand Herald which notified Europeans and Maori "in or about the Arawa country" that they were prohibited from selling, leasing or surveying land under the authority of the committee.[91]

81. On September 1879 the chair of Te Komiti Nui, Eruera Te Uremutu took Te Arawa's concerns to Premier, Sir George Grey, seeking: the removal of the Crown proclamation under the Government Native Land Purchases Act and the Native Land Act Amendment Act 1877; that the management of the Rotorua lands be left in the hands of Te Komiti Nui; that Crown Purchase officer Mitchell be removed; and, that Maori could aggregate any cash advances which were purported to tie up Rotorua lands.[92]

82. In December 1880 Chief Judge Francis Fenton found that Te Komiti Nui were exercising considerable authority over land and other matters, particularly amongst Ngati Whakaue but amongst adjacent iwi as well.[93] Fenton commented on Te Komiti Nui:

> *in existence, at Ohinemutu, a highly organised head body with Chairman, Secretary and officers. It was constituted as a Land League for the prime object of preventing alienation to the Crown and in a secondary degree, of obstructing or assisting, as the case may be, in association with private persons, but it subsequently assumed other powers and duties...*[94]

83. In 1880 Te Komiti Nui investigated the title of the Pukeroa Oruawhata Block according to custom finding in favour of 800 individuals.[95]

84. In 1881 Te Komiti Nui sought standing before the Native Land Court in the investigation of title for the Town Block. Te Komiti Nui assumed that the Maori and Court would merely affirm their recommendations, however, the Court refused to recognise the rangatiratanga of Te Komiti Nui and disregarded its recommendation awarding the block to 295 individuals.[96]

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[90] Rose p44 ref 165
[91] Final Draft Rose, p58
[92] O'Malley, pp121-123
[93] Ward, p 52.
[94] Fenton to Rolleston, 18 December 1880, MA 13/79. NA. Quoted Boast, 61
[95] Rose, p 91.
[96] Armstrong, D.V, Te Arawa and Politics, 2002, p138

> *Ngati Whakaue... agreed to submit Pukeroa Oruawhata to the Native Land Court, they expected the court to confirm the findings of the Komiti Nui. Instead, they endured a lengthy and expensive re-litigation of ownership, which resulted in a finding that differed from that reached by the tribal authority.*[97]

85. As commented, "the Great Committee still sits at Ohinemutu to hear land claims, but they get through but little business".[98]

86. In May 1881 Te Komiti Nui objected to a private survey of Okoheriki. On 30 May 1881, Paora Te Amohau informed Fenton of the survey which was conducted without the consent of Ngati Whakaue.[99]

87. Despite it's inability to adjudicate over land, Ngati Whakaue sought to affirm Te Komiti Nui. In 1882 the New Zealand Herald commented that Ngati Whakaue had reinstigated the "Great Committee of Rotorua....for the purpose of watching the movements of the Government, and checking any undue pressure likely to affect their interests in this district".[100]

87. In March 1882, Premier John Hall met the "Rotorua Committee" and was informed that they "wished the govt in some way to recognise them as a body in fact I suppose something like a governing body...and also that the Govt should send them word to that effect".[101]

88. Despite in 1883 the Crown passing the Native Committees Act which enabled Native Committees to report their decisions "for the information of the court". The native land court being empowered to recognise these native committees, as a matter of deliberate policy resolutely refused to recognise the standing of autonomous bodies such as Te Komiti Nui, or to implement decisions agreed in hui organised by them.[102]

89. O'Malley states that "the Government was free to deal with the Komiti Nui as it chose, working through it where convenient, or ignoring it and allowing the inevitable process of individualisation of title followed by alienation to take effect.[103]

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[97] Rose, K. The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century, p 92
[98] AJHR 1880, G.-4, 10
[99] Rose 131
[100] Williams, p152
[101] Hall to Fenton, 3 March 1882, (telegram), N.L.C 82/1244, MA 13/79, National Archives. [vol. 3, pp. 671-73].
[102] Wiiliams, D. V. Te Kooti Tango Whenua, p95
[103] O'Malley, V. The Crown and Te Arawa, c.1840-1910. November 1995, p164

90. William Rees in 1891 noted that the Native Land Court:

> *Jealous of [the Commission of Inquiry into Maori Land Laws], and looking with disfavour upon the possible loss of any of its own power or prestige, treated the finding and reports of the committees with contempt; they were immediately relegated to the waste paper basket. The committees find their report thus disregarded, and themsevles despised, discontinued their action.*[104]

91. On August 1896, Judge Wilson reported a boycott of Court hearings at Ohinemutu and Maketu where Ngati Whakaue chiefs "physically barred Maori 'from the very door of the Court House", maintaining a constant presence at Court hearings, with one Ngati Whakaue chief always attending the Court. As part of Te Arawa Ngati Whakaue supported the Te Kotahitanga Parliament proposition to abolish the Native Land Court to be replaced by Maori Committees. [105]

[104] Wiiliams, D.V Te Kooti Tango Whenu p95
[105] Rose, p 246.

ii) THE FENTON AGREEMENT 1880 & CLARKE AGREEMENT 1883

Breach

92. The Crown breached the principle of good faith by:

i. failing to honour the terms of the Fenton Agreement;

ii. using the Fenton Agreement to secure the resources of Ngati Whakaue to it's sole advantage;

iii. failing to rectify the breach of terms; and

iv. eroding the rangatiratanga/autonomy of Ngati Whakaue resulting in their economic dependence on the Crown.

Particulars

93. During the 1860's and 1870's Ngati Whakaue enjoyed a reasonable standard of living and wealth. Following the cessation of hostilities in the region in the 1860's and 1870's Ngati Whakaue sought to take advantage of new economic opportunities with Pakeha settlers and welcomed government initiatives to develop the infrastructure of the district.

94. In November 1880 Ngati Whakaue sought to establish a special relationship with the Crown over and above the Treaty of Waitangi in an assertion of their rangatiratanga. This was achieved by both parties entering into an Agreement (commonly referred to as the "Fenton Agreement") for the establishment of a new township under the auspices of Ngati Whakaue.

95. The Fenton Agreement was a framework that set out how Ngati Whakaue and the Crown would engage with each other in the establishment and management of the new township, and Ngati Whakaue's lands and resources. The agreement was a futuristic template for building a relationship whereby both parties would be able to enjoy and prosper in the district[106], however, underpinning this agreement was the understanding that Ngati Whakaue lands would be preserved to them and protected from alienation by sale and that the Crown would act in the capacity as trustee with Ngati Whakaue retaining their rangatiratanga and kawanatanga over their land and resources.

96. However, the Crown breached it's fiduciary duty to Ngati Whakaue and failed to honour the terms of the Fenton's agreement thereby resulting in the gradual erosion of Ngati

[106] Rose, p 382.

Whakaue's mana and ownership of its resources. This included the imposition of rates on the Ohinemutu settlement..

Facts

97. After the 1860 Wars, tourism resumed and increased with the development of the regions infrastructure.[107] Ngati Whakaue's settlement of Ohinemutu grew as European businesses established the settlement as a centre for tourists. Ngati Whakaue owned or invested in may of the new hotels and other businesses established at Ohinemutu in the early 1870s. [108]

98. In 1880 Te Komiti Nui decided that it wished to lay out a township around the Rotorua hot springs[109] after the proposal had been raised in Septmeber 1879 with Premier George Grey.[110] Judge Fenton faced strong opposition from Maori to land sales, therefore he negotiated the agreement that the Rotorua Township lands would be leased.[111]

99. The Komiti convened on 25 November 1880 to endorse the agreement between the Crown and claimants to the Rotorua township. Following this endorsement, the agreement was signed by 47 chiefs. Most were Ngati Whakaue rangatira but signatories included rangatira of Ngati Uenukukopako and Ngati Rangiwewehi.[112] This agreement was subsequently amended in February 1883 by Ngati Whakaue and Judge Clarke.

100. The agreement between the Crown, Fenton and the Komiti was that leases in the township would be auctioned by the Crown on behalf of the Maori owners, once these had been determined by the Native Land Court.[113]3

101. In agreeing to the establishment of the township in 1880, Ngati Whakaue had established conditions that they wanted the Crown to meet. The Fenton Agreement set out obligations for both Ngati Whakaue and the Crown, it defined a template for the future relationship between the two parties. Ngati Whakaue envisaged a future in which they would share in the authority over and prosperity of the district. It soon became apparent

[107] O' Malley, p 31.
[108] Rose, p 10.
[109] Ward, p 51.
[110] Rose, p 70.
[111] Locke, p 48.
[112] Rose, p 75.
[113] Ward, p 52.

that this was not the Crown's intention. The Crown's failure to meet its obligations under the Fenton Agreement engendered a grievance that abides to this day.[114]

102. Retaining a degree of autonomy was a central feature underlying Ngati Whakaue's agreement with the government for the establishment of the township. The Fenton Agreement recognised an ongoing role for Komiti Nui. [115]

103. In March 1882 the first auction of the township leases was conducted with resounding success, promising Ngati Whakaue an annual income in excess of 2,750 pounds.[116]

104. By November 1882, when the six monthly rental was due, nearly three quarters of this went unpaid.[117]

105. On 25 February 1883 H.T Clarke entered into a second agreement with Ngati Whakaue modifying the original arrangement and providing for the appointment of receivers of rent.

106. In February 1884 Ngati Whakaue met with Bryce and Rolleston to voice their concerns about the way in which the terms of the Fenton Agreement were being implemented.[118] Bryce was dismissive of Ngati Whakaue's concerns stating, "we have heard that there are grievances with the natives, but we believe some of them are fanciful. However, we have come that the natives may thoroughly ventilate them".[119]

107. Paora Te Amohau replied that:

> *I have repeatedly asked the Government for money on account of the township when we were on the brink of starvation, but the Government turned a deaf ear to these petitions. It was not their money I asked, but what was due to us for our lands.*[120]

108. In 1884 Gilbert Mair also wrote that Ngati Whakaue, having lost the benefit of the rents were reduced to "starvation".[121]

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[114] Rose, p 382.
[115] Rose, p 329.
[116] AJHR, 1936, G-6D, p.3 [vol.1, p.254]
[117] AJHR, 1936, G-6D, p.3. [vol.1, p.254].
[118] BPT, 26 February 1884, DB, pp.[2-4]
[119] Rose, p 330. BPT, 26 February 1884, DB, pp. [4,5]
[120] BPT, 26 February 1884
[121] Mair papers. MS-Papers-0092-15. ATL. Docs. P440

109. In 1885 Native Minister John Ballance informed Ngati Whakaue that part of the reason for the failure to collect the rentals owing was due to refusing to give up the 20,000 acres required for the railway.[122]

110. In 1886 Ngati Whakaue suffered a severe economic downturn, with lessees unable and/or unwilling to pay their rent. The Crown promised to act but very small sums were paid to Ngati Whakaue. The level of rents collected between 1889 and 1890 were extremely low.[123]

111. The Crown did very little to insist on payment from the lessees and negotiated the termination of many leases on terms favourable to the lessees.[124]

112. On 23 November 1889, Pererika Ngahuruhuru asked the Native Minister to intervene to stop Europeans demanding the payment of debts from Ngati Whakaue. As Lewis explained when forwarding this to the Native Minister in January:

> *The Rotorua Natives are in a somewhat hard case – under the impression that they would receive a large amount in rents they incurred debts for which they are now being sued. When they brought the question before me I told them most distinctly that the Govt could have nothing to do with their private debts.*[125]

113. The level of rents collected in 1889 and 1890 were extremely low, which does not suggest that the Crown improved its record in collecting the arrears. Rental income would have been considerably greater if the Crown had withstood the pressure from the lessees and insisted on payment. The Crown's failure to press for unpaid rent and its willingness to reduce the size of these debts had enabled many lessees to get away with not paying the rent that was due. This placed Ngati Whakaue in a precarious position, the Crown then took advantage of this to push for the purchase of the freehold of the township.[126]

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[122] O'Malley, p 195.
[123] Rose, 362.
[124] Rose, p363 & O'Malley p196.
[125] Rose, p 362.
[126] Rose, p 363.

114. In March 1883 Te Pukeroa Hill was made a public reserve. Te Komiti Nui was to appoint a Maori-European Committee to oversee the recreation reserve but this was overturned with responsibility for the reserve vested in the Town Board.[127]

115. In signing the agreement with Fenton in November 1880, Ngati Whakaue expected to play a significant and ongoing role in the management of the township. However, Komiti Nui was progressively sidelined as extensive Native Land Court hearings predominated from the early 1880s. Bryce's comments about the government's authority over Ngati Whakaue's affairs left no room for recognition of tribal authority.[128]

116. Contrary to the provisions of the Fenton Agreement, Ngati Whakaue involvement in the administration of the township was limited to minority representation on the Rotorua Town Board between 1883 and 1891. [129]

117. The Bay of Plenty Times reported on the 1884 visit by the Ministers stating "the visit of the Ministers has been a most unsatisfactory one, both to themselves and to the residents". Ngati Whakaue had failed to receive any assurances that their concerns about the way in which the terms of the Fenton Agreement were being implemented would be addressed. The grievances that Bryce dismissed as "fanciful" remained of concern to Ngati Whakaue.[130]

118. In 1889 Ngati Whakaue was forced to sell to the Crown all the Pukeroa Block not already gifted as reserves.

119. The Tourist and Health Resources Department assumed the primary government role in the township from its establishment in 1901. There was little room in this structure for Maori participation in the administration of the township. The provisions of the Fenton Agreement for Maori involvement in the affairs of the town had been undermined.[131]

120. In 1908 the Stout Ngata Commission remarked that the experience of Te Arawa "seems to have been a bitter one" being particularly relevant to the experience of Ngati Whakaue, following the failure of the township scheme and the undermining of the terms

[127] Rose, p 126.
[128] Rose, p 334.
[129] Rose, p 334.
[130] Rose, p 333.
[131] Rose, p 376.

of the Fenton Agreement. [132] The Commission remarked that "A transaction of that character would, if it took place between an ordinary trustee and a beneficiary, be set aside by any Court of justice before whom the transaction came for decision".[133]

121. In 1962 the trustee relationship between the Crown and Ngati Whakaue was now denied by the Crown. Yet again, the Crown failed to fulfill its obligations under the Fenton Agreement.[134]

iii) OHINEMUTU VILLAGE

Breach

122. The Crown failed to honour the terms of the Fenton Agreement that excluded Ngati Whakaue from the imposition of rates within Ohinemutu Village, thereby the Crown acted inconsistently with the principles of the Treaty of Waitangi to protect and ensure the rangatiratanga of Ngati Whakaue.

Particulars

123. The Crown breached the terms of the Fenton Agreement by including the village of Ohinemutu within the boundaries of the Thermal District, thus usurping the rangatiratanga of Ngati Whakaue.

Facts

124. Ngati Whakaue claim that fundamental to the Fenton Agreement was the understanding reached between Ngati Whakaue and the Crown that the Maori village at Ohinemutu would be exclusively under the rangatiratanga of Ngati Whakaue, and that as such Ohinemutu would not be subject to the imposition of rates of any rating authority.

125. Section 3 of the English version of the Agreement states:

> *The site of the present Maori village and the Lake will be left as it is a "Kainga Maori".....*

[132] Rose, 327-328.
[133] Rose, p 385.
[134] Rose, p 429.

126. The Maori version states:

> *Ko te whenua e takoto ana I waenganui o Te Pukeroa ki Rotorua me waiho ano tena hei kainga mo koutou mo nga Maori.....*

127. Section 13 of the English version of the Agreement states:

> *No land within the block is to be rated until leased. Then the lessee shall become liable to rates.*

128. The Maori version states:

> *E kore e ahei te ture takoha kia eke ki runga I nga whenua o tenei poraka. Kahore ano I retia otiia ma te kaireti e utu aua takoha ana retia te whenua.*

129. In 1880, after concluding the Fenton Agreement Judge Fenton stated:

> *The small piece, the site of the existing native village, I excluded, because it is so encumbered with graves, Native houses, and European claims and squatting, that I thought it best not to meddle with so much bother, especially as we do not require the place.*[135]

130. Malfroy's reports to the Surveyor General distinguish between the "old township" of Ohinemutu and the "new township" based on the Rotorua leases.[136]

131. Ngati Whakaue envisaged that the village would be left undisturbed by the proposed township and that it would be administered by its own Local Government[137], probably through the existing administrative structure of Te Komiti Nui o Rotorua.

132. Clause 3(3) of the Fenton Agreement anticipated the continuation of Te Komiti Nui after the establishment of the township. The Maori version stated:

> *Me utu nga tangata e whai piihi ana I te Pukeroa ki etahi piihi o te taone ma Te Komiti Nui o Rotorua tenei e whakahaere.*

133. The TSDA 1881 included the village of Ohinemutu in the schedule. The TSDA set a precedent for all subsequent legislation relating to Rotorua, all of which embraced Ohinemutu within its boundaries.[138]

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[135] Remarks Explanatory of the Agreement
[136] Rose, p 375.
[137] Rotorua Township, Fenton Agreement 1880, Clarke Agreement 1883, p1
[138] Rotorua Township, Fenton Agreement 1880, Clarke Agreement 1883, p2

134. Rates have been payable by Ngati Whakaue on lands within Ohinemutu since 1894 through the Rating Act 1894 and the Rotorua Borough Act 1922 with legislation failing to acknowledge that Ohinemutu should not be rated. After meeting with Ngati Whakaue, the Crown failed to rectify this situation.

B) NATIVE LAND COURT

Breach

135. The Crown, in breach of the Treaty, established the Native Land Court with the purpose of:

i. facilitating the alienation of Maori land for settlement;
ii. transplanting Maori customary title and rights into fee simple title;
iii. promoting and facilitating the detribalisation of Ngati Whakaue; and
iv. promoting and facilitating the assimilation of Ngati Whakaue into Pakeha customs and practices.

All contrary to:

v. Maori custom;
vi. Tino rangatiratanga; and
vii. Tikanga.

Particulars

136. Various blocks belonging to Ngati Whakaue have been inquired into by the Native Land Court and titles issues, including the Pukeroa Oruawhata, Whakarewarewa, Rotomahana-Parekarangi No.4 (Moerangi), Patetere, Rotohokahoka and Okoheriki blocks.

137. The Crown through the institution of the Native Land Court imposed individualised title that was inconsistent with Ngati Whakaue's traditional tenurial system based on communal ownership.

138. The Crown failed to acknowledge Ngati Whakaue's desire to retain their lands under customary control. Through the imposition of the Native Land Court's process, Ngati Whakaue was forced to bear the significant costs involved in taking claims to Court,

particularly survey costs, forcing Ngati Whakaue to sell land in order to make payment on these debts.

139. The Crown failed to prevent the loss of Ngati Whakaue land and ameliorate the effects of the Court process.

Facts

140. Ngati Whakaue claim that prior to 1840 they held, exercised and were recognised as having rangatiratanga over their tribal estate in accordance with their own tikanga.

141. From 1873 Te Arawa actively opposed the operations of the Native Land Court in the Central North Island.[139]

142. On 13 August 1873, Ngati Whakaue expelled Crown officers Davis and Mitchell from Ohinemutu.[140] Davis and Mitchell noted in a letter to the Under Secretary:

> *a circumstance which induced the authorities to transfer from Maketu and Rotorua to Tauranga the sitting of the Lands Court, in the hope that the spirit of turbulence in regard to the Arawa land matters would be subdued; but even here, to prevent the outbreak of hostilities, Sir Donald McLean ws compelled to oder the closing of the Court, and the withdrawal from the district of all surveyors.*[141]

143. In 1874 a delegation of Te Arawa chiefs travelled to Wellington to lay their grievances with respect to the Government's land dealings.[142] They informed the Select Committee on Native Affairs that:

> *Te Arawa people have from the foundation of the colony consistently refused to lease or sell their lands; and while all the other great tribes have divested themselves of the greater portion of their tribal lands, the Arawa country has remained almost untouched in the hands of the aboriginal owners. Then the Native Land Court was established, the tribe refused to take advantage of it..*[143]

144. The 1874 delegation also stated that Ngati Whakaue was opposed to the Native Land Court because:

> *[M]en of no standing in the tribe began to lease or sell without the knowledge or consent of the acknowledged leaders of the people. The result was, that at*

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[139] Rose, p.20
[140] 20 August 1873, Bay of Pleny Times (BPT), Rose, p.30
[141] Davis and Mitchell to Native Under Secretary, 24 April 1876, AJHR, G-5, p.2.
[142] O'Malley, p.66
[143] Report of the Select Committee on Native Affairs, 25 August 1874, AJHR, 1874, I-3, p.2 [vol.1, p81].

> *subsequent sittings of the Court no lands were allowed to be put through. Then the tribe complained to the Government, and asked that their lands should be entirely tied up, so that in future no sales or leases could take place.*[144]

145. In February 1885 Ngati Whakaue expressed their opposition to the Native Land laws, the operation of the Native Land Court, the high cost of surveys and that the Native Committee be granted more powers at a meeting with the Native Minister Balance.[145]

146. The continuation of the Native Land Court system was confirmed by the Native Land Court Act 1894. The divisive system continued, with its emphasis on individualisation, its succession rules that were resulting in increasing fragmentation of title and its attendant expenses that contributed to pressure on the retention of land.[146]

147. Although the hearings of the Native Land Court started in 1881, by 1908 when the Stout-Ngata Commission visited Rotorua, just over 6,000 of the more than 600,000 acres in the broader Rotorua district remained in Maori ownership.[147]

148. Rose states:

> *Te Arawa was oppsed to the Court's assumption of authority over the adjudication of title. They objected to its elevation of the interests of individuals, which undermined tribal control. Te Arawa were also opposed to land-selling, a position that had been determined by the iwi as a collective.*[148]

149. The Native Land Court hearing to apportion individual interests in Pukeroa O Ruawhata continued intermittently through to the beginning of 1888. Lewis had suggested in May 1886 that the ongoing and lengthy hearing should be brought to an end. He believed legislation should be enacted to enable the Native Land Court judge, H T Clarke and the Rotorua Committee to reach a speedier conclusion on how the rent should be apportioned. Ballance did not agree with this recommendation and the hearing proceeded.[149]

150. 1100 shares were apportioned amongst the individual owners of the Pukeroa Oruawhata block. A significant portion of Ngati Whakaue objected to Clarke's award. Firstly, that they had not been consulted when Clarke and the assessor were appointed to apportion

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[144] bid.
[145] AJHR, 1885 G1, pp.45, 51-52, O'Malley DB, pp.136, 142-143
[146] Rose, p 324.
[147] O'Malley, V, p.178, AJHR, 1908, G-1E, p.11. [vol.1, p.207].
[148] Rose, p.18
[149] Rose, p 341-342.

shares, secondly, that they did not think the agreement of February 1883 authorised such an appointment and, thirdly, that they did not know "whether the individualization of the shares means shares in lands or shares in the rents".[150] Clarke responded that any decision he made would not be satisfactory to "members of a tribe notorious among all other tribes for their overbearing selfishness".[151]

151. Judges MacCormacl and Wilson found that:

> *Judge Clarke drew up a share of relative interests, but he does not appear ever to have done this as a Native Land Court order in Open Court ... this definition of relative interests is therefore merely Mr. Clarke's opinion of what ought to be the shares in the block."*[152]

152. The Native Land Court had a devastating affect on the traditional structures of Ngati Whakaue:

> *"To me the best thing to do is to sell that Township to the Government as so much trouble exists in connection with individual shares, as some have small and some large shares in consequence of Mr Clarke's decision which has caused sorrow on all the people."*[153]

Particulars

153. The processes of the Native Land Court was adversarial which had a devastating impact on Ngati Whakaue's relationship with the neighbouring iwi within Te Arawa..

154. The sittings of the Native Land Court not only facilitated the alienation of land, but was severly disruptive for Ngati Whakaue with devastating social and economic consequences.

Facts

155. On 27 January 1871 a dispute arose between Ngati Whakaue and Ngati Pikiao over a piece of land. Henare Te Pukuatua voiced his opposition to the Native Land Court stating"the quarrel has arisen through you. The Government are to blame" though he added that, "for all that, if the Ngatipikiao wish to try their strength with the Ngatiwhakaue, we are quite ready to meet them in the battle field"..[154]

156. In 1880, Brabant reported that Maori in Ohinemutu and Maketu districts:

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[150] Rose, p 342.
[151] Rose, p 343.
[152] Judges MacCormack and Wilson in Rose, p 344.
[153] Ieni Tapihana in Rose, p 344.
[154] Clarke to Halse, 27 January 1871, AJHR II, F.-6A, 7.

have not had such good crops as usual, and throughout the year have been badly off for food. This is no doubt owing in a measure through their having had to attend Land Courts, and given much of their time to discussing the subject of the disposal of their lands.[155]

157. On March 1882 the NZ Herald reporting in March 1882 noted that conditions at Ohinemutu where rampant with alcohol abuse and illness. The correspondent described the general level of ill-health, particularly amongst children, attributing it to malnourishment and "unwholesome dwellings".[156]

158. The Bay of Plenty Times stated that "the natives of Ohinemutu are in a state of semi-starvation".[157]

159. The pressure to shelter Tuhourangi after the Tarawera eruption of 1886 at Ohinemutu added to Ngati Whakaue's strained circumstances.[158]

160. The findings of the 1908 Stout-Ngata Commission confirmed the hardship Ngati Whakaue was faced with in struggling to sustain themselves on an inadequate land base, concluding "the experience of the Arawa Tribe, more particularly of the Ngati Whakaue hapu, seems to have been a bitter one".[159]

C) SURVEY COSTS

Breach

161. The Crown, in breach of the principles of the Treaty, forced Ngati Whakaue to pay survey costs associated with customary title investigation which resulted in the loss of substantial amounts of land in satisfaction of survey costs.

Particulars

162. The Crown, failed to protect Ngati Whakaue against the loss of substantial amounts of land in satisfaction of survey costs.

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[155] cited in David Armstrong, "Ngati Makino and the Crown: 1880-1960" CFRT, Wellington, 1995, WAI 46, G6, p. 52
[156] Cited Armstrong (1005), pp.53-54
[157] Cited in O'Malley, pp.184-185
[158] BPT, 15 December 1882
[159] Stout & Ngata, 10 March 1908, AJHR, 1908, G1E, pp1-6,

Facts

163. The Native Land Act 1873 required the survey of lands investigated by the Native Land Court as a prerequisite to issuing of a title.

164. The Crown imposed an obligation on Ngati Whakaue to pay the survey costs which the Crown considered necessary. Such survey costs were a particular burden because Ngati Whakaue had no way to raise money on security of their land to pay the survey costs as the Crown failed to collect arrears from the township leases.[160]

165. The Crown pre-emption meant that the Crown essentially had a monopoly on securing survey charges by way of payment in land, at its customary low monopolistic prices.[161]

166. The high cost of survey continued notwithstanding criticisms by Chief Judge Fenton of the Native Land Court in 1871.[162]

167. The Crown imposed a lien on the land for survey costs and Block owners remained liable to pay survey and could forfeit part of land to Crown if unable to pay.[163]

168. The legislative provisions of section 94 of the Native Land Court Act 1894 and the Native Land Laws Amendment Act 1896 allowed the direct sale of land for unpaid survey liens.[164]

169. During a parliamentary session in September 1893, William Kelly asked the government "If they will assist the Maoris of the Thermal Springs District to pay the liens held by surveyors against their land?" The Minister of Land's response was that the government "had no power to assist the Maoris" but would "endeavour to purchase the lands as soon as possible", at which point the survey liens would be paid.[165]

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[160] Rose, 51, re the evidence of Mitchell to Haultain, and 267, statement in 1890 confirming that land was being sold explicitly to pay survey charges, and Rose's conclusion, 325.
[161] Rose, 276.
[162] AJHR 1871 A2a, p 11.
[163] Omalley p63
[164] Rose, 236.
[165] Rose, p 274.

170. In May 1890, Crown Purchaser Mitchell asked the Crown to acquire his outstanding survey liens from him, stating that the owners of the blocks concerned were willing to pay for these liens in land.[166]

171. On 26 April 1893, he submitted agreements that had been signed by "leading men of the hapus concerned" to set aside portions of their land n payment of the survey liens.[167]

172. In 1895, the Government agreed to take over some of these liens. The liens over blocks in the Rotorua District Inquiry which the government agreed to take over included the Okoheriki block.

173. By 1898, the liens had been registered and accordingly taken over by the Crown in the Okoheriki block (£260.3.4)[168]

174. The Crown's purchase of Okoheriki shows the burden of unpaid survey costs continued to be a significant factor underlying Crown acquisitions in the Rotorua district.[169] Ngati Whakaue also owed survey liens in the Rotohokahoka, Kaitao and Tihiotonga blocks.[170]

175. The valuation of Okoheriki 1D was increased from 2/6 to 5/- per acre to account for the cost of survey liens. Even at this price, the survey liens of £32.5.8 to the Crown and £132.0.10 (private) generally represented 17% of the value of the block.[171]

176. Ngati Whakaue sought some reprieve from the large liens owing on the land at Okoheriki.[172]

177. On 15 December 1890 Hamuera Pango offered to convey Ngati Te Ririu and Ngati Karenga hapu of Ngati Whakaue interests to Kaitao 2 and 3 and Rotohokahoka C, D and F to the Crown in payment for the survey of their interests in Rotorua-Patetere-Paeroa. They asked for the value of these sections to be "equal to that for the 20,000 acres which we gave for the railway, that is 5/6 per acre". The Crown decided against making this

[166] Rose, p.276
[167] ibid, p277
[168] Rose, p.278
[169] Rose, p 274.
[170] Rose, p 276.
[171] Block area and survey liens taken from BHR. Note that 7/6 paid to Ratete for 1000 acres of this block, but this was to account for his agreement to sell land elsewhere.
[172] Rose, p 268.

explicit link between the survey lien (owed to Henry Mitchell) and its purchase, but this debt was undoubtedly a factor in sales.[173]

178. On 19 October 1893, Peter Oliphant wrote to the Minister of Lands asking if the government would purchase the survey lien he held against Okoheriki 1F. Mitchell's April 1892 survey of the block had cost £51.5.8 and Oliphant had acquired this lien from Mitchell in February 1893. On 15 December, Sheridan informed Oliphant that the Crown would discharge the survey lien if it purchased the block, which it could not do until the title had been dealt with.[174]

179. The 1000-acre Okoheriki 1D was also indebted with a large survey lien and on 10 November 1893 Gill sought Sheridan's advice on how to secure this lien. He remarked that the owners were "very poor & sadly in want of money for expenses in boat accident". Sheridan instructed Gill to "Make whatever adjustment of survey lien you think is fair and reasonable. Don't be too exacting".[175]

180. In December 1897 Oliphant informed the Crown of his intention to enforce a mortgagee sale of Okoheriki 1F. Interest on the survey lien meant that the owners of Okoheriki 1F now owed £66 in survey costs. The Minister of Lands approved the purchase of Oliphant's lien over the block in February 1898.[176]

181. Ngati Whakaue owed survey costs on several other divisions of Okoheriki 1, Kawaha and Te Koutu. On 10 August 1898, the owners of Mitchell's survey lien, Hesketh & Richmond gave notice of their intention to sell these blocks to secure these liens.[177]

182. On 18 August 1898_Retireti Tapihana forwarded the notice of intention to sell to Gill, asking him "to prevent these lands being sold and to devise some means to prevent the sale taking place". Gill's proposed solution was for the Crown to acquire the survey lien, in exchange for which it would secure a portion of the affected blocks.

183. On 12 October 1898, Retireti Tapihana informed Sheridan that Ngati Whakaue wanted the government to pay these claims in exchange for a portion of the blocks concerned. He

[173] Rose, pp 267.
[174] Rose, p 267-268.
[175] Rose, p 268.
[176] Rose, p 270.
[177] Rose, p 270.

suggested that the Crown could apply to the Court for partitions on the basis of the land being valued at 5 shillings an acre. He also suggested the possibility that the liens could be used as the basis of the purchase of a larger proportion of the blocks. Gill valued the land at 5 shillings an acre.[178]

184. In support of his application, Gill enclosed offers from the owners of a couple of the affected blocks to sell "for the purpose of paying the money expended in the survey". Ngati Whakaue hapu, Ngati Korouateka and Ngati Manawa offered 50 acres in Okoheriki 1I East and 100 acres in Okoheriki 1H1 and 1H2, Ngati Tunohopu offered 150 acres in Okoheriki 1H and a further 150 acres in 1i1 and 1i2 and Ngati Te Tiwha offered 50 acres in Okoheriki 1i central.[179]

185. On 19 December 1898, Sheridan recommended that the government take over the liens, informing the Minister of Lands that "There will be no difficulty in obtaining an equivalent in land".[180]

186. On 8 December 1898, Herewini Amohau & others, "the chiefs and the whole of Ngatiwhakaue tribe" wrote to the Native Minister, Seddon offering to sell Okoheriki 1F, 1K and various divisions in Okoheriki 1H and 1i. They explained that they wished to sell these blocks "to clear these lands of mortgage".[181]

187. Okoheriki 1F was valued and purchased at £133.13.0. The survey lien, including interest, was £90.14.6 by 1899, which accounted for 68% of the value of the Block.

188. In 1887 Ngati Whakaue was awarded 4207 acres of the Rotomahana-Parekarangi Block No. 4 (Moerangi), being the northen side of the Whakarewarewa block. The Crown purchased 2953 acres (70%) of the block and requested that this be partitioned out. On partition in 1899, the Crown surveyed out an additional 767 acres (18%) of the block, with the Crown keeping the additional land in lieu of survey charges thereby reducing Ngati Whakaue's holding to 487 acres (12%) of the block.

[178] Rose, p 271.
[179] Rose, p 271.
[180] Rose, p272.
[181] Rose, p 272.

189. It is likely that the processes adopted by the Crown in the above case studies occurred in all of the blocks that are the subject of this claim.

D) NINETEENTH & TWENTIETH CENTURY LAND ALIENATION

i) Thermal Springs District Act 1881

Breach

190. By enacting the Thermal Springs District Act 1881 ("TSDA") the Crown, in breach of Article 2 and the principle of active protection of the Treaty, sought to:

i. acquire the lands of Ngati Whakaue;
ii. acquire the resources in particular Geothermal of Ngati Whakaue
iii undermine the rangatiratanga of Ngati Whakaue over their lands, resources and esteemed institutions;3

Particulars

191. No advice on pre-emptive right in favour of Crown.

192. This monopoly of sale affected Ngati Whakaue's ability to negotiate on the sale of their land, giving the Crown the mechanism by which to dictate the cost and rate of alienation to their advantage.

193. The Crown failed to provide, protect and allow for the interests of Ngati Whakaue in the geothermal springs and resources within Ngati Whakaue's domain by proclaiming them as belonging to the Crown under the TSDA.

194. The Crown failed to recognise and respect the rangatiratanga and kaitiakitanga of Ngati Whakaue over their geothermal springs and resources by removing the control of those resources away from the involvement of Ngati Whakaue.

Facts

195. The Crown failed to consult with Ngati Whakaue on the pre-emptive right of sale when enacting the TSDA..[182]

196. The TSDA provided the Crown with a monopoly of purchase over 646,000 acres from Tauranga to Taupo. [183].

197. The preamble of the TSDA stated that:

> *It would be advantageous to the colony, and beneficial to the Maori owners of the land in which natural mineral springs and thermal waters exist, that such localities should be opened to colonization and made available for settlement: And it is expedient that powers should be given to the Governor enabling him to make arrangements for effecting that object.*

198. Under section 2 of the TSDA the Governor could proclaim any district 'in which there are considerable numbers of the ngawha, waiariki, or hot or mineral springs, lakes, rivers, or waters' as being subject to the provisions.

199. The Act went beyond the area that Ngati Whakaue had intended, giving the Crown a foothold in the district.

> *It was well known that for some years past there had been the greatest difficulty in getting a foothold in this Native District...but since last session the Government had been enabled, through the efforts of Mr Fenton, the Chief Judge of the Native Land Court, to come to terms with the Natives by which a considerable portion of their land would be placed in the hands of the Government.*[184]

200. Initially Ngati Whakaue was supportive of the TSDA because of the revenue it promised to provide them with and that it might offer them some form of protection from alienation except from the Crown:

> *Ngati Whakaue, it seems believed that the Thermal Springs Act would provide them with some breathing space, allowing their lands outside the township to be passed through the Court in their entirety before a considered assessment could be made as to what would be done with respect to the advance payments made by Mitchell and Davis on most of their lands in the 1870's. Such a view was probably grounded in the hope or expectation that the Government would*

[182] Rose, p.5-8
[183] O'Malley, p 156.
[184] NZ Parliamentary Debates Vol. 40 1881: 493

continue to deal with the Komiti Nui, as Fenton had done when arranging the township agreement.[185]

201. With the failure of the township scheme, Ngati Whakaue felt the constraints of the TSDA, and in 1888 at a hui at Te Awahou it presented a petition asking the government for the removal of the Thermal Springs District proclamation. Ngati Whakaue had also drafted proposed legislation to repeal the TSDA and enable them to manage their own land. It was submitted to the government without success.[186]

202. In January 1908, Ngati Whakaue submitted a memorandum to the Stout Ngata Commission outlining their grievances about the impact of the Thermal Springs District Act 1881. They informed the Commissioners that:

> *We were taught to regard "The Thermal-Springs District Act, 1881" as the Magna Charta of our liberties, and as the declaration of the respective position of ourselves as the landowners, and as having vested interests in all that pertained to our ancestors from times past, and the Government which stood for the mana and dignity of the Crown.*[187]

203. Ngati Whakaue also went on to describing disillusionment with the Crown.

> *When the Ngati-Whakaue saw that not only were written agreements left unfulfilled but verbal promises valued by us as sacred and as valuable as the gifts we had donated to the public use were disregarded or repudiated, our previous filial respectful faith wavered and engendered suspicion that all was not well.*[188]

204. The Solicitor-General, Walter Scott Reid advised the Crown that it would normally be the case that the Crown's role as agent would prejudice its ability to buy the interests of the beneficiaries it was representing. However, Reid argued that the provisions of the TSDA overcame this because Sections 3 and Section 5(1) expressly recognised the Crown's right to acquire land.[189]

205. Reid's argument indicates that the TSDA brought even greater advantages to the Crown than they had already secured. The 1881 Act enabled the government to proclaim a pre-emptive right of purchase over a very large area of land. It was now also argued that the trust embodied in the leasing arrangement did not protect Ngati Whakaue from Crown

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[185] O'Malley, V. 1995, p.160
[186] Rose p 241.
[187] Rose, p 383.
[188] Rose, p 384.
[189] Rose, p 351-352.

pressure to sell the township land. The government held that it's role as agent did not preclude it from divesting its trustees of their land.[190]

206. The repeal of the TSD legislation cannot be considered as an adequate response to Ngati Whakaue's concerns. The decision to remove the Crown's monopoly on purchasing was no doubt welcome but it did nothing to remedy the deleterious impact that this monopoly had wrought on Rotorua Maori during the decades in which it was applied.[191]

ii) CROWN PURCHASING POLICY AND PRACTICE

Breach

207. The system of Crown purchasing was unfair to Ngati Whakaue and in breach of the principles of the Treaty in that:

a) The Crown used various methods to privilege itself in comparison to private purchasers, thus depriving Ngati Whakaue of the opportunity to sell at market values;

b) The Crown used various techniques designed to force Ngati Whakaue into selling land, such as payment of tamana and withholding rental payments on leases;

c) The Crown took advantage of Ngati Whakaue poverty during the later nineteenth century to buy large areas of land cheaply and to the detriment of Ngati Whakaue;

Particulars

208. Substantial areas of land blocks awarded to Ngati Whakaue by the Native Land Court were subsequently purchased by the Crown.

209. The Crown acquired substantial areas of Rotomahana Parekarangi; Okoheriki; Kaitao; Rotahokahoka and other blocks within Ngati Whakaue rohe.

[190] Rose, p 352.
[191] Rose, p 386.

210. Crown purchasing was carried out under a variety of legal devices which placed the Crown in a monopoly position to the disadvantage of Ngati Whakaue. The Crown used these devices to drive down prices and buy land from Ngati Whakaueat less than market values.

211. Crown purchasing devices which operated disadvantageously to Ngati Whakaue included:

i. The use of proclamations to bar private parties from dealing with the land under s 2 of the Native Land Purchases Act 1877 and other enactments.

ii. The payment of tamana, also known as 'groundbaiting'

iii. Leasing land from Ngati Whakaue and vesting monopoly purchasing rights on the Crown as a term of the lease.

212. Suspending the operation of the Native Lands Acts in the Taupo and Bay of Plenty districts between 1873 and 1877 under s 4 of the Native Land Act 1877 and s 6 of the Native Land Act 1873 while at the same time requiring Ngati Whakaue to obtain title to the block in the Native Land Court as a condition for the payment of rent.

213. Reimposing Crown pre-emption on the entire country by s 117 of the Native Land Court Act 1894.

214. The Crown refused to pay rentals on blocks subject to leases before the Native Land court had awarded titles to the blocks but allowed its agent to pay advances to individuals. These advances were then charged against the leased blocks. While these advances helped allay costs associated with the Native Land Court process in the short term they had serious long-term implications for the recipients who had to sell land in order to repay the Crown.

215. The Crown used tactics of arranging leases with Ngati Whakaue which were then used as a device to pressure Ngati Whakaue into land-selling. The Crown's failure to pay the rent on a regular basis, and its whittling away of the rental through charging of advances and survey costs against the land forced the majority of the block's owners to sell their interests to the Crown.

216. The Crown's ability to purchase individual interests in Maori land operated to the disadvantage of Ngati Whakaue. Treating the title-holders as absolute owners whose individual interests could be purchased on a piecemeal basis fostered divisions within communities and undermined traditional social structures.

217. The partitioning process as used by the Crown operated to the disadvantage of Ngati Whakaue by allowing individuals to sell land, causing community divisions and facilitating alienation of land to the Crown.

218. Crown protection mechanisms were either inadequate or not utilised by the Crown.

219. The Crown had no fair and reliable system of valuation in place at the time of its land transactions with Ngati Whakaue and this was to the disadvantage of Ngati Whakaue.. Valuation for Crown purchasing was conducted by government land purchase officers without any means of independent review. There was no procedure for obtaining independent valuations from the Valuation Department until 1905.

220. Although earlier statutes imposed restrictions on the alienation of some blocks of investigated land, the Crown exempted itself from these controls by s 14 of the Native Land Purchase Act 1892 and s 52 of the Native Land Court Act 1894.

221. The Crown, in breach of the principles of the Treaty, exploited Ngati Whakaue's vulnerability in relation to the alienation of it's tribal lands and estate.

222. The Crown in breach of the principles of the Treaty, promoted the alienation of Ngati Whakaue lands in return for the economic benefits that a railway would bring to the Rotorua township.

Facts

223. In February 1884 Ngati Whakaue met with Rolleston and Bryce to discuss issues surrounding the Rotorua township and to seek an endowment for the proposed railway. Rolleston and Bryce then proceeded to blame the need for improved access on lower than

expected rentals for the township leases, stating "help us in getting a railway, for if you get a railway your lands will become valuable".[192]

224. On 7 August 1884 the Crown gazetted 20,000 acres of Ngati Whakaue land Okoheriki (19,000acres) in return for 5500 pounds and the promise of a railway[193].

225. In February 1885 Ngati Whakaue informed Native Minister Balance that they had already agreed to the sale of 20,000 acres in order to secure the construction of the railway and could not afford to spare any more of their land holdings. [194]

226. Despite Ngati Whakaue's expectation, the Railway did not reach Rotorua until 1894, by which time the Crown had already aquired the township block.

227. Gill completed the purchase of a number of divisions in Okoheriki 1. The Native Land Court vested Okoheriki 1D6 in the Crown in September 1896 and 1D2, 1D3 and 1D5 were awarded to the Crown the following month. The whole of the Okoheriki 1E block, 2681 (2626) acres, was awarded to the Crown on 19 January 1899.[195]

228. The Crown used various unscrupulous tactics to acquire Ngati Whakaue land interests, exploiting Ngati Whakaue's economic vulnerability and indebtedness due to the failure of the township scheme and costs associated with the Native Land Court system.

229. The general attitude of the Government is displayed in one member of the House, W. Kelly, writing to the Minsiter of Lands on 30 October 1888 claiming "Taekata's wife died last night. She is a woman of great rank. Now is the time to purchse (shares).[196]

230. On 31 October 1888, Lewis asked resident Magistrate R.S Bush to proceed to Rotorua without delay to take advantage of the opportunity offered by the death of Taekata's wife. The government was quick to take advantage of the vulnerability of Ngati Whakaue at this time.[197]

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[192] Bay of Plenty Times, 26 February 1884, DB, pp.[6-7]
[193] This included Okoheriki 1A, 1B, 1C and 1G, Rotorhokahoka A and B and Kaitao 1 and Waiteti 1
[194] Rose p149
[195] Rose, p 269.
[196] AJHR G-10 1890: 5
[197] Rose, p 346.

231. The resident Magistrate at Tauranga, R.S Bush, reported to Parliament in 1888 that "Natives short of food just now, of which opportunity should be taken...Sydney Taiwhanga and lawyer to be at Rotorua on Tuesday next, with some tons of flour to get the documents signed re Rotorua lands.[198]

232. In 1889 a Government official wrote "Paora Te Amohau died on Saturday. Present would be good time to initiate Rotorua purchase".[199]

233. On 1 August 1887, Mair forwarded Ngati Whakaue an offer to sell 2000 acres in Okoheriki 1 to pay for the tangi of the rangatira Rotohiko Haupapa. Mair stated "all the neighbouring tribes will assemble here and Whakaue are in great extremity for food."[200]

234. The government's mismanagement of the leasing scheme meant that the benefits accrued to Ngati Whakaue were significantly less than could have been expected, leaving them with little choice but to revoke their long-held opposition to sale.[201]

235. The Whakarewarewa Forest Research team summized the reason behind Ngati Whakaue's alienation of the Whakarewarewa block was due to:

> *For the largely absentee Ngati Whakaue "owners", already smitten by the financial loss of the failed Rotorua township scheme, selling their Whakarewarewa interests was a matter of financial necessity.*[202]

236. Individuals that went against the wishes of the tribe and sold their land did it to pay for food and clothing for their children, to pay Court fees, to build a house and to buy agricultural implements, such as ploughs, carts and horses and fencing wire.[203]

237. In the absence of competition produced by the Thermal Springs District Act, the Crown used its monopoly position to inhibit Ngati Whakaue's ability to negotiate a fair price.

238. Maori debtors did not have the recourse of European lessees who had failed to pay their rent. They often had little option but to sell their land in order to meet debt payments.[204]

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[198] AJHR G-10 1890: 5
[199] ibid: 4
[200] MA-MLP 1 1887/272, DB, pp.
[201] Rose, p 357.
[202] Whakarewarewa Forest Trust Research Team *The Alienation of the Whakarewarewa* Block, 1996, 38
[203] Rose, p 358.
[204] Rose, p 347.

239. On 28 January 1889, Wiremu Ratete (William Rogers) offered to sell 550 acres that he owned individually in Okoheriki 1, "owing to my impoverished state" and because he was prohibited from dealing with private parties. Ratete accepted the low offer from the Crown "as I am now in great want of money" on the condition that the restrictions be removed, which would enable him to sell to private interests.[205]

240. Native Under Secretary Lewis was intent on resident magistrate Bush acquiring " the whole or greater part of the interests in the Rotorua township block and knowing whether "Whakarewarewa can be obtained on reasonable terms.[206]

241. Find quote about ngati Whakaue wanting to sell land for large sum. Government agent Gill in correspondence to Sheridan stated that he would purchase [the lands at Whakarewarewa] as cheaply as possible if instructed.[207]

242. O'Malley remarks:

> *Even leaving aside considerations as to the cast amounts of money Ngati Whakaue had lost due to the mismanagement of their 'trustee', the Crown. Yet, as the Government well knowe, the Crown pre-emption still effectively in place and Ngati Whakaue facing considerable accumulated debts, they were hardly in a position to neogitiate a fair price.*[208]

243. In September 1889, the Native Land Court considered Ratete's application for a partition of Okoheriki 1D and awarded ownership of the 1000-acre 1D1 block to Ratete. On 16 September, Ratete offered to sell this land to the Crown. The Crown's offer was not acceptable to Ratete, and on 14 March he applied for a removal of the restrictions on Okoheriki 1D1 to enable him to sell to a private party. The Crown failed to consider this request and in the face of a lack of choice, Ratete had accepted £375 from the Crown for the block, which was considerably less than private parties had offered.[209]

244. Ngati Whakaue was awarded substantial tracks of land by the Native Land Court that was subsequently purchased by the Crown. These include interests in the Pukeroa-

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[205] Rose, p 264.
[206] NO 1/88/265 in MA-MLP Box 49 p101: Doc. P.26
[207] NLP 92/70 in MA-MLP1/Box 49, p40: Doc p.29-32
[208] O'malley, V. The Crown and Te Arawa, a. 1840-1910. November 1995, p204
[209] Rose, pp 265 – 266.

Oruawhata, Whakarewarewa, Rotomahana-Parekarangi No.4 (Moerangi), Patetere, Okoheriki, Kaitao and Rotohokahoka Blocks.

245. The Crown also deliberately sought to purchase individual interests thereby undermining the tribal leadership of Ngati Whakaue that was opposed to the alienation of land.

246. As a tribe, Ngati Whakaue remained opposed to sale of land. This was voiced consistently by Ngati Whakaue rangatira. On August 1889, Te Herewini Te Amohau, Eru Te Uremutu and 49 others on 19 August 1889 stated:

> *If it is your wish to purchase the Township at Whakarewarewa together with Tikitere, Orakeikorako, Waiotapu and other mineral springs, then we wish to inform you that we are entirely opposed to that wish, and that we... prefer having the control over our own lands and to manage the same....*"[210]

247. At a meeting on 8 November 1888, Resident Magistrate Bush found that Ngati Whakaue were "very much divided" over whether to sell their interests in the township. Although no-one at the meeting had spoken in favour of selling, Bush believed that many would be prepared to do so and he proposed approaching these potential vendors individually.[211]

248. Crown purchases were driven through in spite of tribal (and pan-tribal) protests. The government's attitude to these processes is exemplified by Gill's activities during the Kotahitanga Parliament. While those at the parliament discussed a united approach to opposing land sales, the Land Purchase Officer took advantage of the gathering to acquire a large number of individual interests.[212]

249. On 27 November 1893 Gill received a telegraph from Sheridan in relation to the Whakarewarewa block to "Take any signatures offering without waiting for any general consent." [213]

250. The Moore-Boyd Report states: "Sheridan expressly instructed Gill to purchase from individuals; an unambiguous order to deal with individuals over (and against) any expressed wish of the group".[214]

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[210] Te Herewini, Te Amohau, Eru Te Uremutu & 49 others to The Hon The Premier, 19 August 1889, LS 119978, DB, pp.[10/3]Rose, p 350.
[211] Rose, p 347.
[212] Rose, p 325.
[213] Moore-Boyd: p53
[214] ibid: p53

251. The Moore-boyd Report also goes on to claim:

> *We have found direct evidence supporting the claim that the Crown failed to protect the collective customary interest at Whakarewarewa:*
>
> 1. *At the time the Government began purchasing, the customary owners were far from agreeing amongst themselves whether they [as a group] wanted to sell;*
> 2. *aware of this, the Land Purchase Office in Wellington nonetheless instructed their Purchase Officer at Rotorua to disregard whether there was "general consent" to sell.*[215]

252. A comparison of Crown purchases and Crown sales in the North Island for various years from 1878 and 1900 is as follows:

[215] ibid: p.63

Date	Average price per acre (shillings/pence)		Mark up %
202.	203.Purchase	204.Sale	205.
206.1878	207.2/10	208.31/7	209.1000
210.1879	211.2/10	212.36/6	213.1200
214.1882	215.4/-	216.25/7	217.535
218.1886	219.4/½	220.15/9	221.285
222.1887	223.3/6	224.13/5	225.285
226.1888	227.3/9	228.15/5	229.310
230.1889	231.2/2	232.13/7	233.525
234.1890	235.2/7	236.17/4	237.525
238.1892	239.3/6	240.14/1	241.300
242.1894	243.4/-	244.43/7	245.990
246.1895	247.5/5	248.14/6	249.170
250.1897	251.3/6	252.19/2	253.450
254.1900	255.2/9	256.20/-	257.625
258.Average	259.3/5	260.21/7	261.530

253. In 1873 McClean secured an effective return to Crown pre-emption in the Ngati Whakaue territories and negotiation for land prior to the land titles being judicially determined effectively reverted to the Crown's prior 1862 practices.

254. CO Davis and Henry Mitchell were commissioned to negotiate for land in the region, on behalf of the Crown, under provisions fo the Public Works and Immigration Act.

255. Although Mitchell and Davis began work in mid 1873 their contract with the crown was not agreed with McLean until October 1873.

256. John Wilson, the former special commissioner who had made a number of arrangements for the confiscated land, was also engaged by the crown to undertake land purchasing. When Mitchell and Davis became aware of this they sought a monopoly of right to negotiate for and on behalf of the Crown in the Maketu territories given their knowledge of their area and previous dealings such as the Chaytor lease. As a result of their requests, Wilson was instructed not to interfere in any way with Mitchell and Davis' work.

257. The modus operandi of Mitchell and Davis was set out in a memorandum concerning the Kaikokopu Block and included:

a) The securing of every available block of land by the making of preliminary agreement with,and paying deposits to, sections of the recognised owners;\

b) Title would be elucidated to each block by organising a series of public meetings, the time and place to be fixed by the various contending claimants themselves;

c) If necessary chiefs and assessors would be called in to assist in any disputes that may arise around the process of purchase;

d) They pursued a strategy of paying deposits to as many groups as possible, over as much of the district as possible, in order to tie up the land for the crown against any future resumption of private purchase.[216]

e) They negotiated with Maori owners and private dealers to pay out the latter and convert the private transactions into Crown transactions. [217];

258. The two agents conducted a series of meetings mostly at hapu level and negotiated mainly for lease of the land rather than purchase. Mitchell and Davis's correspondence reveals that they saw leasing as the prelude to eventual purchase of the land. So too did the Minister of Native Affairs of the time, Daniel Pollen, who told the Legislative Council in 1874:

> *It was perfectly well known that, in dealing with Native land, the first step was the lease, and that obtained,the freehold inevitably followed in time.*[218]

[216] Alan Ward p 37
[217] Rose pp 34

259. Mitchell and Davis were in 1876 to report that they were well received by Te Arawa, even though the Government was not offering as much money for land as private buyers.

260. Ngati Whakaue had interests in the 211,000 –acre Rotomahana Parekarangi block.[219]. By December 1895 the Crown had purchased 63 119 acres of the Rotomahana Parekarangi Block for an average price of 3 shillings per acre.

261. Ngati Whakaue's interests in Okoheriki were also the focus of Crown purchasing during the 1890's. Further transactions in the block were facilitated through deepening economic problems, indebtedness through unpaid survey liens and the inability to negotiate with anyone other than the Crown.[220]

262. During the meeting with Ballance in 1885, Ngati Whakaue had protested the call for further land sales to enable the establishment of a railway. As they informed the Native Minister, they had already agreed to the sale of 20,000 acres for this purpose and could not afford to spare any more of their land holdings. Balance had conceded this was reasonable.

ii a) OKOHERIKI

263. During the 1890's the Crown completed purchases in over 6000 acres of Ngati Whakaue's remaining land in Okoheriki and negotiations in another 4000 acres were still underway in 1900.[221]

264. The purchase of portions of Okoheriki 2 from May 1884 onwards is indicative of how the process privileged the Crown. The Crown had paid 7/6 for an initial purchase in Okoheriki 2A. However, later vendors were offered only 5/6, then 5/9 for Okoheriki 2B, in spite of the fact that the Crown's agents recognised the land was as good as or better than the previous purchase, and in spite of the fact that private purchasers had offered them £1 per acre. The private offer was 247% more than the eventual Crown purchase at approximately 5/9 per acre.[222]

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[218] New Zealand Parliamentary Debates, vol 16 p209 cited in Rose p 44
[219] Rose p 310
[220] Rose, pp 312 and 314
[221] Rose p 263
[222] Rose, 156-160.

265. In the face of lack of competition the Crown made very few purchases in the Rotorua district during the period 1890-1900 at more than 5/- per acre. Much of the Rotomahana Parekarangi Block was purchased during this time at 3/- per acre, which had been described by Crown agents as "valuable estate" at the beginning of the 1880's.[223]

266. In 1889 Wiremu Ratete was offered 17/6 per acre for land in Okoheriki 1 from a private party. He was prevented by accepting this offer by the TDSA pre-emption clause, and was forced to accept 7/6 per acre, plus £9 to assist with the extraordinary survey costs on this block. Excluding the survey assistance, the private price was 133% more than that offered by the Crown.

267. Ratete also offered other land Okoheriki 1D1 to the Crown in 1889, stating that he had been offered almost 12/- per acre for the Block by a private party. The Crown would only purchase at 7/6 an acre, and this offer was said to be due to his willingness to sell his shares in Rotorua township at the same time. The private price was approximately 60% higher than that offered by the Crown. Further, most of the other Okoheriki 1D divisions were purchase at 5/- per acre in 1894-1897, meaning that the private offer for nearby land was approximately 140% greater than the price achieved for these divisions.[224]

268. That survey liens influenced Ngati Whakaue's involvement in Crown purchases was demonstrated by an offer from Hamuera Pango on 15 December 1890. Pango informed the Chief Surveyor that the Ngati Te Ririu and Ngati Karenga hapu of Ngati Whakaue intended to convey Kaitao 2 and 3 and Rotohokahoka C,D, and F to the Crown in payment for the survey of their interests in Rotorua-Patetere-Paeroa. They asked for the values of these sections to be equal to that for the 20,000 acres which we gave for the railway, that is 5/6 per acre. The Crown decided against making this explicit link between the survey lien owed to Henry Mitchell and its purchase but the debt was undoubtedly a factor in sales.[225]

269. On October 19 1893 Peter Oliphant wrote to the Minister of Lands asking if the government would purchase the survey lien he held against Okoheriki 1F. Mitchell's April 1892 survey of the block had cost 51.5.8 and Oliphant had acquired this lien from

[223] Rose, p 253.
[224] Rose,pp 263-269.
[225] Rose p 267

Mitchell in February 1893. On 15 December 1893, Sheridan informed Oliphant that the Crown would discharge the survey lien if it purchased the block, which it could not do until the title had been dealt with.[226]

270. The 1000- acre Okoheriki 1D was also indebted with a large survey lien and on 10 November 1893, Gill sought Sheridan's advice on how to secure this lien. He remarked that the owners were very poor and sadly in want of money for expenses in boat accident. Sheridan instructed Gill to "Make whatever adjustment of survey lien you think is fair and reasonable. Don't be too exacting".[227] Ngati Whakaue sought some reprieve from the large liens owning on the land at Okoheriki.

271. Gill completed the purchase of a number of divisions in Okoheriki 1. The Native Land Court vested Okoheriki 1D6 in the Crown in September 1896 and 1D2, 1D3, and 1D5 were awarded to the Crown the following month. The whole of the Okoheriki 1E block, 2681 (2626) acres , was awarded to the Crown on the 19 January 1899.[228]

272. In December 1897 Oliphant informed the Crown of his intention to enforce a mortgagee sale of Okoheriki 1F. Interest on the survey lien meant that the owners of Okoheriki 1F now owed 66 in survey costs. The Minister of Lands approved the purcha Ngati Whakaue owed survey costs on several other divisions of Okoheriki 1, Kawaha and Te Koutu. On 10 August 1898, the owners of Mitchell's survey lien, Hesketh & Richmond gave notice of their intention to sell these blocks to secure these liens.[229]

273. Retireti Tapihana forwarded the notice of intention to sell to Gill on 18 August, asking him "to prevent these lands being sold and to devise some means to prevent the sale taking place". Gill's proposed solution was for the Crown to acquire the survey lien, in exchange for which it would secure a portion of the affected blocks. On 12 October, he informed Sheridan that Ngati Whakaue wanted the government to pay these claims in exchange for a portion of the blocks concerned. He suggested that the Crown could apply to the Court for partitions on the basis of the land being valued at 5 shillings an acre. He

[226] Rose pp 267-268
[227] Rose, p 268.
[228] Rose p 269
[229] Rose, p 270.

also suggested the possibility that the liens could be used as the basis of the purchase of a larger proportion of the blocks. Gill valued the land at 5 shillings an acre.[230]

274. In support of his application, Gill enclosed offers from the owners of a couple of the affected blocks to sell "for the purpose of paying the money expended in the survey". Ngati Whakaue hapu, Ngati Korouateka and Ngati Manawa offered 50 acres in Okoheriki 1I East and 100 acres in Okoheriki 1H1 and 1H2, Ngati Tunohopu offered 150 acres in Okoheriki 1H and a further 150 acres in 1i1 and 1i2 and Ngati Te Tiwha offered 50 acres in Okoheriki 1i central.[231]

275. On 19 December 1898, Sheridan recommended that the government take over the liens, informing the Minister of Lands that "There will be no difficulty in obtaining an equivalent in land".[232]

276. On 8 December 1898, Herewini Amohau & others, "the chiefs and the whole of Ngatiwhakaue tribe" wrote to the Native Minister, Seddon offering to sell Okoheriki 1F, 1K and various divisions in Okoheriki 1H and 1i. They explained that they wished to sell these blocks "to clear these lands of mortgage".[233]

ii b Whakarewarewa Geothermal Valley

277. In its decision on ownership in Rotorua-Patetere-Paeroa in 1883, the Native Land Court had awarded ownership of Whakarewarewa in equal portions to Ngati Whakaue and Ngati Wahiao. [234] The partition hearing of 1889 overturned the original decision. Ngati Whakaue were awarded 967 acres, leaving Ngati Wahiao with 176 acres. A rehearing of the partition in 1893 resulted in a further reduction of Ngati Wahiao's interests to an equivalent of 129 acres. The 93-acre Whakarewarewa 2 was awarded to Ngati Wahiao, Whakarewarewa 1, of 871 acres was awarded to Ngati Whakaue and the remaining 215-acre portion, Whakarewarewa 3 was jointly awarded to Ngati Whakaue (with a 5/6 portion) and Ngati Wahiao (1/6).[235]

[230] Rose, p 271.
[231] Rose, p 271.
[232] Rose, p272.
[233] Rose, p 272.
[234] Rose, p 257.
[235] Rose, p 257.

278. Offers to sell to the Crown in 1889/1890 emanated from both Ngati Whakaue and Ngati Wahiao/Tuhourangi individuals. The Crown took advantage of individual offers, disregarding the general wishes of the iwi.[236]

279. The Crown was determined to acquire Whakarewarewa to secure Crown control and bring the collection of tolls to an end.[237]

280. On 29 October 1893, Gill suggested purchasing Whakarewarewa 1 and 2 for seven shillings and sixpence an acre. The 215-acre Whakarewarewa 3:

> *"contains all the Springs – Baths and Ngawha's. There is no guide to value this wonderful spot... If I am instructed I will purchase as cheaply as possible, with a margin for contingencies."* [238]

281. On 29 November, Sheridan replied, "Take any signature offering without waiting for any general consent". Gill was given explicit authority to deal with individuals, regardless of the wishes of the tribe.[239]

282. In reporting to the Native Minister on the purchase of the block Gill stated "Notwithstanding opposition on all sides Mr Gill has been eminently successful all round". [240]

> *In less than ten years, the Crown had succeeded in securing 90% of the Whakarewarewa, leaving Ngati Whakaue and Ngati Wahiao with a total of 118 acres.*[241]

283. The Crown then applied for a definition of its interests under the provisions of the Native Land Court Act 1894, securing the most desirable areas of land for itself without regard to the protests of the remaining Maori owners.[242]

284. The Crown's overriding objective was to secure the valuable thermal resources at Whakarewarewa and to divest Maori of their control of this tourist site.[243]

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[236] Rose, p 258.
[237] Rose, p 256.
[238] Rose, 259.
[239] Rose, p 259.
[240] Rose, p 259.
[241] Rose, p 262.
[242] Rose, p 260.
[243] Rose, p 326.

E) GEOTHERMAL ISSUES

Breach

285. The Crown in breach of the principles of the Treaty failed to provide and protect the interests of Ngati Whakaue in the geothermal springs and resources within Ngati Whakaue's domain.

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

287. The Crown in breach of the princples of the Treaty failed to act upon or implement the recommendations of the Waitangi Tribuanl in its report 'Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993'.

Particulars

288. The Crown failed to uphold Ngati Whakaue's customary ownership of the geothermal resources within their domain.

289. The Crown trespassed on and exploited Ngati Whakaue's geothermal resources without due regard for the spiritual significance of the resources to Ngati Whakaue, without consulting them, without payment, and without due regard for their customary ownership and kaitiakitanga over the resources.

290. No redress or adequate redress has been provided by the Crown to recognise Ngati Whakaue's customary ownership and kaitiakitanga over their geothermal resources and no compensation or adequate compensation has been provided in recognition of the Crown's interference with those rights.

Facts

291. As at 1881 Ngati Whakaue held mana over the geothermal resources of ngawha, puia and waiariki as their taonga. This includes both the surface manifestations of their geothermal resources and the sub-surface components within their traditional boundaries.

292. Ngati Whakaue claim their rights to nga waiariki derive from their ancestor Ngatoroirangi, Tohunga on the Te Arawa canoe. Ngatoroirangi is accredited with calling out to his sisters, "Te Pupu me Te Hoata" who resided in Hawaiki to warm him and who are responsible for bringing geothermal energy to Aotearoa.[244]

293. Ngati Whakaue's special relationship is also derived from the social, cultural and economic importance these geothermal resources played in their daily lives, being a constant source for cooking, bathing and medicinal uses.[245]

294. The Crown failed to uphold Ngati Whakaue's customary ownership of these geothermal resources within their domain.

295. The Crown enacted the TSDA and other legislation to exploit these resources without consulting Ngati Whakaue and without due regard for the spiritual, social and economic significance to Ngati Whakaue.

296. The Crown also enacted legislation without consulting Ngati Whakaue that assumed management of this resource without due regard for Ngati Whakaue's role as kaitiaki over the resource.

297. As Stout and Ngata noted in their initial report on Te Arawa land in Rotorua County, the Crown had been the primary purchaser, using its monopoly under the Thermal Springs District Act to purchase "in all the blocks containing hot or mineral springs".[246]

298. Under the Geothermal Energy Act 1953, the Crown was vested with the sole right to use and control geothermal resources and these rights continue under s354(1)(a) of the Resource management Act 1991.

299. The loss to Ngati Whakaue of the geothermal resources means that Ngati Whakaue have not been able to develop the economic potential of such resources.

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[244] Stafford, p 22.
[245] Locke C, *Maori and Tourism (Taupo-Rotorua) 1840-1970*, p 22(Draft)
[246] Rose, p 322.

300. The geothermal resources within a hapu/ iwi's mana whenua is a taonga to that iwi/ hapu. That iwi/ hapu have rangatiratanga over those geothermal resources and act as kaitiaki of them.[247]

301. The Crown has a duty to actively protect Maori's respective interests in both the benefit and enjoyment of their geothermal resources as their taonga and the mana or authority to exercise control over them.[248]

302. The value to be attached to geothermal resources as a taonga is essentially a matter for those who have rangatiratanga over the resource to determine. Such value is not confined to, or restricted by, traditional uses of the taonga. It will include present day usage and such potential usage as may be thought appropriate by those having rangatiratanga over the taonga.[249]

303. The Crown's right to manage or oversee the management of geothermal resources in the wider public interest must be constrained so as to ensure that Maori's interests in their respective taonga is preserved in accordance with their wishes. There does not appear to be any exceptional circumstances or overriding public interest which would justify any other conclusion which might leave it open for Maori's interest in their taonga to be harmed or rendered ineffectual.[250]

304. Maori's interest in the resource is not confined by traditional or pre-Treaty technology or needs, but in appropriate cases includes the development of the resource for economic benefit and by modern technology.[251]

305. The Crown should not impose a system of royalties or resource rentals and take benefit from the utilisation of geothermal resources without first determining and giving appropriate effect to the interests of those who have rangatiratanga over the resources.[252]

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[247] Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993, Chapter 5.
[248] Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993, Chapter 5.
[249] Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993, Chapter 5.
[250] Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993, Chapter 5.
[251] Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993, Chapter 5.
[252] Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993, Chapter 5.

F) TOURISM

306. The Crown in breach of the principles of the Treaty failed to protect the economic position of Ngati Whakaue by undermining the Tourist industry that Ngati Whakaue was involved in.

Particulars

307. The Crown intentionally targeted the acquisition of lands that contained geothermal resources because of their value to the 'public' and in particular tourists.

308. The Crown discouraged and discriminated against Maori running tourist ventures for capital gain.

Facts

309. Maori lived at the site of, and made extensive spiritual, cultural, social and economic use of many geothermal features and freshwater springs throughout the CNI Region, including Whakarewarewa, Tikitere, Orakei Korako, Tokaanu, Hamurana, Taniwha, and Te Puna o Tuhoe (Fairy) Springs.[253]

310. After the 1860 Wars, tourism resumed and increased with the development of the regions infrastructure.[254] Ngati Whakaue's settlement of Ohinemutu grew as European businesses established the settlement as a centre for tourists. Ngati Whakaue owned or invested in may of the new hotels and other businesses established at Ohinemutu in the early 1870s. [255]

311. In 1880 Ohinemutu was still the principle centre of trade and communications for Maori operations. Ngati Whakaue was not content to remain a stop over place for visitors visiting Rotomahana and planned that with the establishment of the township at Rotorua, tourist trade would increased and become centred "on their town".[256]

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[253] Locke, 19 (Tokaanu), 23-27 (geothermal generally), 20 (Orakei),
[254] O' Malley, p 31.
[255] Rose, p 10.
[256] Locke, p.51

312. Visitors to Ohinemutu were intrigued by the uses of the thermal resources on which the village was built for cooking, bathing and heating and this accessibility to tourists allowed for construction of roads and briges between Maketu and Ohinemutu.[257]

313. During the 1883-1884 tourist season 12,050 visitors visited the Lakes District spending £15,400 during their stay. Tourism brought business to settlements throughout the Rotorua district. Objections from Europeans over Maori control were raised.[258]

314. The Crown was motivated by desire to control a developing tourism industry and assert authority over the region and over Maori.[259] This was to be at the expense of Maori who were to be excluded from the industry. Maori were regarded as an impediment to this trade and incapable of efficiently managing such a large and lucrative industry.[260]

315. The Crown opposed the charging of any or any adequate tolls for visiting the scenic attractions of the CNI when in Maori hands.[261]

316. In 1885 Native Affairs Minister John Ballance advocated a low scale of charges, if any, to be levied on tourists, characterising local charges as "blackmail".[262]

317. Between 1880 and 1900 the majority of Maori lands containing thermal springs in the Central North Island were alienated. This significantly reduced the chances of Maori playing a prominent role in the Tourist trade.[263]

318. By 1900 the Government controlled most lands containing hot springs in the thermal springs district. Maori no longer controlled this trade but were reduced to service workers in the industry or to becoming tourist attractions themselves.[264]

319. The Crown imperative to purchase land with geothermal resources came from pressure from the Pakeha public to prevent Maori owners from charging visitors. In 1894 the Hot Lakes Chronicle reported:

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[257] Rose p.11
[258] Rose, p.14
[259] Rose, p 5-8.
[260] Locke, p 43.
[261] Locke, p 12.
[262] Locke, 53-54.
[263] Locke, p 176.
[264] Locke, p 148.

> *We claim that the extortionate charges made by natives in the shape of toll-fees for viewing the sights is inimical to the interests of the district as a tourist resort, sending many visitors away disappointed and disgusted.*[265]

320. On 13 April 1892, Malfroy wrote to the surveyor general warning that toll gates were "detrimental to the prosperity of the district" and suggested that Maori be threatened with having to pay rates on land that they charged a toll on, or that the Government seek to purchase [the Whakarewarewa block] the whole area as a way of resolving the toll issue.[266]

> *The geothermal features of Whakarewarewa formed the basis of the tourist attraction to the area. One of the reasons for the Crown purchasing the Whakarewarewa blocks was to take control of the geothermal features in order to establish its own tourist industry.*[267]

321. After purchasing land with geothermal resources, the Crown began a process of regulating the resource without consulting with or providing an avenue for Ngati Whakaue to participate in the management of their geothermal resource:

322. In the case of the geothermal resource at Whakarewarewa, the Crown secretly targeted the hot pools and geysers for acquisition in order to deprive Maori owners of all such resources. Not only were the Maori owners deprived of these resources but the Crown pretext for acquiring them was initially to ensure that they did not fall into private ownership.[268]

323. In 1881, the Attorney-General, Freferick Whitaker remarked that:

> *An arrangement had now been made, however, with the natives, by which the springs at Ohinemutu and Rotorua were to be dealt with in a way agreed upon by the Government and the natives. The matives would under no circumstances absolutely sell, but they are willing to make an arrangement which they would hand over the Governmetn these springs, together with four or five thousand acres of land, the Government having power to lease the land, haanding over the proceeds, after deducting all expenses, to the natives.*[269]

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[265] Hot Lakes Chronicle 31/1/1894 in the Don Stafford Collection.
[266] Notes of Meeting in AJHR 1885 G-1
[267] Whakarewarewa Forest Trust Research Team, The Alienation of the Whakarewarewa Block, 1996, p52
[268] Whakarewarewa Forest Trust Research Team, The Alienation of the Whakarewarewa Block, 1996, p52
[269] NZPD. August 26, 1881. Vol. 40. p128

G) SOCIAL AND ECONOMIC IMPACT

Breach

324. The Crown breached its fiduciary duty to protect Ngati Whakaue by implementing legislation, which did not protect the interests of Ngati Whakaue and in fact promoted the confiscation and alienation of the lands and taonga of Ngati Whakaue.

325. The Crown breached its obligation to recognize the rangatiratanga of Ngati Whakaue in that it imposed a Western system of land tenure without recognition of the Maori land tenure.

326. The Crown breached its duty to protect the interests of Ngati Whakaue through its Native Land Court process which committed Ngati Whakaue to a cycle of debt and poverty causing the alienation of their lands.

327. The Crown breached its duty to recognise Ngati Whakaue tino rangatiratanga over and within their domain.

328. The Crown breached its duty to convey to Ngati Whakaue the same rights and privileges of citizenship as was conveyed to European citizens.

Particulars

329. The Crown failed to properly recognise and actively protect the interests of Ngati Whakaue in their land and resources and to properly protect such resources from environmental degradation and in particular the Crown failed to properly protect the natural waters of Rotorua, and the interests of Ngati Whakaue and their constituent whanau and hapu as the guardians of those resources.

330. The imposition of individualised title in the Native Land Court led to a breakdown of Ngati Whakaue's traditional social structures.

331. The Crown acted discriminatorily against Ngati Whakaue imposing harsh practices that were not inflicted on Pakeha British subjects.

332. In breach of Te Tiriti, the Crown utilised the impoverishment it had created within Ngati Whakaue to coerce the peoples of Ngati Whakaue into decisions that benefited the Crown while further entrenching the socio-economic dysfunction of Ngati Whakaue.

Facts

333. The findings of the Stout-Ngata Commission confirm the impression given by Crown purchase records of the late nineteenth century. Most Maori communities in Rotorua were struggling to sustain themselves on an inadequate land base. Decades of Native Land Court hearings and Crown purchasing under the provisions of the Thermal Springs District Act had left Te Arawa in a precarious socio-economic position.[270]

334. The continuation of the Native Land Court system was confirmed by the Native Land Court Act 1894. The divisive system continued, with its emphasis on individualisation, its succession rules that were resulting in increasing fragmentation of title and its attendant expenses that contributed to pressure on the retention of land.[271]

335. The introduction of Trout caused a decline in Ngati Whakaue indigenous fresh water food supply namely inanga, toi toi, koura and kakahi. As the traditional food sources slowly diminished Maori began to supplement their catches with the new fish trout. However the Crown imposed trout fishing licences restricting access to this resource.[272]

336. The Crown interest in tourism meant that when Ngati Whakaue sought to upgrade their housing at Ohinemutu in a "non-Maori" style, permission was refused.[273]

337. In 1880, Brabant reported that Maori in Ohinemutu and Maketu districts:

> *have not had such good crops as usual, and throughout the year have been badly off for food. This is no doubt owing in a measure through their having had to attend Land Courts, and given much of their time to discussing the subject of the disposal of their lands.*[274]

338. On March 1882 the NZ Herald reporting in March 1882 noted that conditions at Ohinemutu where rampant with alcohol abuse and illness. The correspondent described

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[270] Rose, p362
[271] Rose, p324
[272] Tania Thompson, 'Rotorua lakes Research', March 1993, p8
[273] Locke, 168.
[274] cited in David Armstrong, "Ngati Makino and the Crown: 1880-1960" CFRT, Wellington, 1995, WAI 46, G6, p. 52

the general level of ill-health, particularly amongst children, attributing it to malnourishment and "unwholesome dwellings".[275]

339. The Bay of Plenty Times stated that "the natives of Ohinemutu are in a state of semi-starvation".[276]

340. The pressure to shelter Tuhourangi after the Tarawera eruption of 1886 at Ohinemutu added to Ngati Whakaue's strained circumstances.[277]

341. The findings of the 1908 Stout-Ngata Commission confirmed the hardship Ngati Whakaue was faced with in struggling to sustain themselves on an inadequate land base, concluding "the experience of the Arawa Tribe, more particularly of the Ngati Whakaue hapu, seems to have been a bitter one".[278]

PART F - THE PREJUDICE

342. As a consequence of the Crown's legislation, its actions, omissions, practices and policies in attacking members of Ngati Whakaue, taking the ancestral lands, resources and other property of Ngati Whakaue and its subsequent and aggravating actions and omissions as set out above, the Claimants have suffered and continue to suffer numerous prejudicial effects including:

a) the dispossession of substantially all of their cultural, spiritual, economic and political base;

b) the loss of mana and the consequent loss of economic, cultural and political autonomy through the continuing erosion of rangatiratanga;

c) the desecration and destruction of waahi tapu and other significant sites and the severance from those areas;

d) the loss of customary fisheries and access to customary fisheries;

e) the loss of economic independence and prosperity;

[275] Cited Armstrong (1005), pp.53-54
[276] Cited in O'Malley, pp.184-185
[277] BPT, 15 December 1882
[278] Stout & Ngata, 10 March 1908, AJHR, 1908, G1E, pp1-6,

f) the arousal of division, dissension and conflict between hapu leading to a breakdown of the traditional structures of Ngati Whakaue;

g) the damage to and gradual destruction of the social structure and organisation of the iwi, hapu and whanau of Ngati Whakaue;

h) the arousal of division, dissension and conflict among the hapu of Ngati Whakaue and between Ngati Whakaue and other iwi;

i) the destruction of the traditional system of tenure;

j) being left with fragmented, meagre and individualised land holdings of little utility or value that are manifestly insufficient for the present and future needs of Ngati Whakaue;

k) being left with insufficient land and resources to actively participate in the economy and enjoy the benefits of European settlement;

l) the damage to the natural environment of Ngati Whakaue and all its abundance of natural resources caused by the pollution of the lands, waterways and air;

m) poor health, wealth and education as a direct or indirect result of the prejudice and losses referred to;

n) the imposing of anxiety, stress and trouble on Ngati Whakaue as a result of the above matters;

o) the causing of gross offence to the right, title and mana of Ngati Whakaue within their rohe;

p) Damage to the wairua and the mauri of the hapu of Ngati Whakaue;.

q) Destruction to their social structures;

r) Damage to their taiao, resources and taonga;

s) Loss of collective and traditional tenurial regimes particular to the hapu o Ngati Whakaue;

t) Large loss of whenua and taonga;

u) Loss of the tino rangatiratanga and autonomy which the hapu o Ngati Whakaue had enjoyed since ancient times..

v) Crown interference saw the destruction of traditional leadership models, the erosion of tino rangatiratanga, and the imbalance of the environment and the power relations both collectively and individually..

w) Unfettered and unlimited Crown acquisition and confiscation of lands from the hapu o Ngati Whakaue have seen the disruption of access to sites of importance, including wahi tapu, mahinga kai, and other sites of cultivation.

x) Due to Crown interference the hapu o Ngati Whakaue sustained massive loss to their structures, their collective identities and their resources. Even where those resources remained, Crown policy and practice hindered hapu development and sustainability of them.

PART G - THE RELIEF

343. Inquire into prejudice to the hapu o Ngati Whakaue arising from breaches of the Treaty by the Crown including those alleged in this Statement of Claim.

344. Make findings as to breach and prejudice, in the terms alleged and generally, and as the Tribunal further determines.

345. Make recommendations for the recognition by the Crown of rangatiratanga of the hapu o Ngati Whakaue consistent with the Treaty including:

a) the restoration to the hapu of Ngati Whakaue of their tino rangatiratanga and full customary entitlements in Ngati Whakaue;

b) recognition of the laws and customs of hapu o Ngati Whakaue moana for the purposes of the conduct of their affairs, their relations with other iwi, and generally in relation to matters touching upon them;

c) the means by which such recognition must be effected to accord with the Treaty guarantee of the rangatiratanga of the hapu o Ngati Whakaue;

d) the full and effective recognition of rangatiratanga of the hapu o Ngati Whakaue in accordance with their laws and customs of their ancestral lands, waters and taonga including lands, waters, mountains, forests, wahi tapu and otherwise whether or not such taonga are perceived now as being in their ownership or possession;

e) the return to the hapu o Ngati Whakaue of all ancestral lands, forests and resources wrongfully acquired to be held by the hapu o Ngati Whakaue consistently with Mäori law and custom and the Treaty of Waitangi;

f) the restoration to the hapu o Ngati Whakaue of their exclusive rangatiratanga in respect of their taonga and the guarantee of a decisive voice in other matters affecting them;

g) the establishment (by legislation if necessary) of a form and process by which the hapu o Ngati Whakaue and the Crown may then resolve as equals under the Treaty the means by which and the extent to which their respective obligations under the Treaty will be given effect;

h) the restoration by other means of the social cultural and economic base of the hapu o Ngati Whakaue in a full and substantial manner;

i) the acknowledgement by the Crown of breaches identified by the Tribunal and an apology independently of any proposed settlement or other inducement;

j) compensation for the loss to date of customary use, occupation and enjoyment of lands, waters and other benefits as a result of breach of the Treaty since its execution down the present; and

k) the recognition of a decision for the hapu o Ngati Whakaue kaitiakitanga and rangatiratanga in relation to taonga and repeal and replacement of legislation purporting to affect the same.

346. Grant such other relief as the Tribunal sees fit.

PART H - AMENDMENTS

347. The Claimants reserve the right to amend or add further to the claim as appropriate.

DATED this 1st day of November 2004

JD Rangitauira MP Armstrong KA Rei

Counsel for Wai 268 317, 335, & 384.