IN THE WAITANGI TRIBUNAL

WAI 894
WAI ~~726~~

IN THE MATTER of The Treaty of Waitangi Act 1975

A N D Claims in the Urewera Inquiry and consolidated under Wai 894

AND the Wai 726 claim by **ROBERT MARUNUI IKI POUWHARE** on behalf of himself and the Ngati Haka-Patuheuheu Trust

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STAGE TWO PLEADINGS DATED THE 16TH DAY OF APRIL 2004 AMENDING AMENDED STATEMENT OF CLAIM DATED 10TH MARCH 2003

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15. DESTRUCTION OF TE UREWERA ECOLOGY

Introduction to Te Urewera

97. From 1840 onwards, the Crown created laws, policies and programmes in relation to:

(a) The introduction and acclimatisation of exotic species into the forests, lakes and waters of Te Urewera, including the introduction of deer, mustelids, opossums, trout and salmon;

(b) The control, restriction and criminalisation of hunting and fishing practises with Tuhoe in Te Urewera; and

(c) The management and control of exotic species, pests and wild animals within Te Urewera.

Introduction of exotic species for Food

98. The Crown in breach of the Treaty of Waitangi, its principles, and contrary to the Integrated Package of Rights, [1] allowed, condoned, sponsored and managed the relatively unfettered introduction or acclimatisation of exotic species into Te Urewera for tourism and trade, without "suitably" protecting the natural resources of Te Urewera or sufficiently allowing Ngati Haka-Patuheuheu use of native and exotic game for their food and subsistence.

Particulars

The Integrated Package of the 1895 Agreement and Crown Legislation

(a) Te Urewera, in this section of this Statement of Claim, may be described as the area within the boundaries of the Urewera District Native Reserve ("UDNR"), Te Urewera National Park, the Rangitaiki Game Reserve and the Waikaremoana Game Reserve being an area in excess of 656,000 acres, including the forests, lakes, fauna, flora and ecology therein.[2]

[1] Including the agreement of 1895 with Sneddon and Carroll, Snedden's letter of 1895, the terms of the UDNRA and s.7 of the APAAA, see Coombes, #A121, pp 46, 72
[2] Coombes, #A121, pp 2, 54 & Figure 1.1 on p79

(b) Prior to the introduction of Crown laws, policies and programmes which affected the fauna, flora and ecology of Te Urewera, Ngati Haka-Patuheuheu customarily managed and adequately protected Te Urewera,[3] and benefited from the natural resources of the region as follows:

(i) Birds traditionally formed one of the chief items of diet of the Tuhoe people, especially because Tuhoe had less access to Kaimoana.[4]

(ii) Among the species traditionally taken were Tui, kereru, and kaka.[5]

(iii) Bird harvesting was managed within a framework of customary law and practise including the use of rahui or placing a tapu on particular species.[6]

(iv) It was standard practise for Tuhoe to bring Kereru preserved in oil to hui.[7]

(v) And, by 1940 preserved Kereru was still an important item of Maori diet.[8]

(c) On 7 September 1895 Seddon and Carroll concluded an agreement with representatives of Tuhoe, including Ngati Haka-Patuheuheu. In a letter to Tuhoe dated the 25th of September 1895, Premier Seddon stipulated the following in relation to the forests, fisheries, fauna, flora and ecology of Te Urewera:

(i) Arrangements would be made "for the introduction of English birds".[9]

(ii) Arrangements would be made for "stocking the rivers with English fish".[10]

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[3] Coombes, #A121, p150
[4] Coombes, #A121, pp 138 & 139
[5] Coombes, #A121, p139
[6] Coombes, #A121, p140
[7] Coombes, #A121, p130
[8] Coombes, #A121, p185
[9] Coombes, #A121, p46 & Seddon to Tuhoe letter dated 25th September 1895
[10] Coombes, #A121, p46 & Seddon to Tuhoe letter dated 25th September 1895

(iii) It was also agreed that:

"A mo runga i ta koutou tono kia tiakina paitia nga ngahere me nga manu o to koutou whenua, ka nui taku koa i au e whakaae atu nei ki taua kupu a koutou" (Maori Text).[11] *or*

"Your forests and birds should be suitably protected" (English Text).[12]

(d) The purpose of the 1895 agreement with Seddon and Carroll was:

(i) To counter-act the Colonial processes of land confiscation and cession which de-stabilised traditional food production in the years before 1895, and provide a solution to the advent of hunger and famine by the supply of food species to Te Urewera for the benefit of Tuhoe;[13]

(ii) To affirm Tuhoe's ongoing rights to traditionally harvest and manage the forests and avifauna of Te Urewera.[14]

(e) In 1896 the Crown enacted the Urewera District Native Reserve Act 1896 ("UDNRA"), which included Seddon's Letter of 1895 in the second schedule.[15]

(f) It was an objective and intent of the UDNRA to confirm the customary management of wildlife and other natural resources within Te Urewera by Tuhoe and therefore by Ngati Haka-Patuheuheu.[16]

(g) In 1895 the Crown enacted the Animals Protection Amendment Act 1895 ("APAAA"). Section 7 of the APAAA restricted the taking of Kereru by stipulating that "native pigeons shall not be taken or killed in any district during

[11] Coombes, #A121, p47 & Seddon to Tuhoe letter dated 25th September 1895
[12] Coombes, #A121, p46 & Seddon to Tuhoe letter dated 25th September 1895
[13] Coombes, #A121, pp 40 & 41-46
[14] Coombes, #A121, pp 46 & 47
[15] Coombes, #A121, pp 46 & 47
[16] Coombes, #A121, pp 56 & 57

the year 1896 and thereafter during every sixth year".[17] However, the Governor, on the recommendation of the Colonial Secretary, had the power to "exclude the Urewera Country and other Native districts in the North and South Islands from the operation of this section".[18]

(h) The Seddon and Carroll agreement of 1895, Seddon's Letter of 1895, the UDNRA and Section 7 of the APAAA formed an "integrated package" which included *inter alia* the following rights relating to the forests, fisheries, fauna, flora and ecology of Te Urewera (the "Integrated Package of Rights").[19]

(i) Tuhoe, including Ngati Haka-Patuheuheu, would be granted a degree of 'local self-governance';

(ii) The Crown would "suitably" protect Te Urewera for the benefit of Tuhoe;

(iii) The Crown was permitted to introduce exotic game for tourism;

(iv) Tuhoe would retain the right to harvest kereru; and

(v) Tuhoe would have the right to use native and exotic game for food and subsistence.[20]

(h) Acclimatisation is the managed process of introducing, liberating and maintaining populations of introduced plants and animals.[21]

(i) From 1846 to 1895 the Crown legislatively condoned the relatively unqualified introduction of exotic species into Te Urewera by early settlers, protecting those exotic species at the expense of Native species.[22]

(j) After the signing of the Treaty of Waitangi the settlers introduced exotic species without any understanding of the likely impacts.[23]

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[17] Coombes, #A121, pp 70 & 145
[18] Coombes, #A121, pp 71 & 145
[19] Coombes, #A121, pp 46, 72 & Seddon to Tuhoe letter dated 25th September 1895
[20] Coombes, #A121, p40
[21] Coombes, #A121, p11
[22] Coombes, #A121, p18
[23] Coombes, #A121, p16

(k) Under the Duties of Customs Ordinance Act 1846 animals and plants were allowed into New Zealand duty-free and there were no powers of refusal or even inspection.[24]

Acclimatisation Societies

(l) The Crown policies for acclimatisation by settlers and acclimatisation societies failed to apply the precautionary principle, and were both mono-cultural and disrespectful of indigenous species to Tuhoe.[25]

(m) The "Protection of Animals Act 1867" ("PAA 1867") introduced a range of measures to establish, encourage and delegate authority to acclimatisation societies. Section 5 of the Act bestowed *quasi*-property rights on introduced animals to acclimatisation societies which meant that they would benefit from licensing of subsequent shooting and could control species until they were suitably established.[26]

(n) The PAA 1867 and its amendment the following year also allowed acclimatisation societies to establish populations of new species around the country.[27]

(o) In 1895 the "Animals Protection Act" ("APA 1895") was amended to provide for a system of approval for introduced species, with the Minister of Agriculture responsible for approving all introductions from overseas.[28]

(p) In 1907 the APA 1895 was amended to prevent unofficial re-distribution of exotic species, but was rather ineffectual.[29]

(q) The Crown had sufficient knowledge of the likely impacts of acclimatisation in Te Urewera to create a more cautious policy for acclimatisation by settlers and acclimatisation societies which would have prevented the worst aspects of what eventually transpired in Te Urewera, but chose not to.[30]

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[24] Coombes, #A121, p16
[25] Coombes, #A121, p16
[26] Coombes, #A121, p17
[27] Coombes, #A121, p17
[28] Coombes, #A121, p18
[29] Coombes, #A121, p18
[30] Coombes, #A121, p18

(r) The Crown continued to allow the relatively unfettered introduction of exotic species and fostered the autonomous powers of acclimatisation societies to do the work after it had received significant evidence of the impact of acclimatisation on Native fauna and flora.[31]

Crown Acclimatisation

(s) The Crown released deer[32] and opossum[33] into the indigenous forests of Te Urewera to provide for the need of recreational hunting and tourism and not as a food source for Ngati Haka-Patuheuheu.

(t) During the decade from 1898 the Crown established the administrative and physical pre-conditions for acclimatisation in Te Urewera, in conjunction with tourism.[34]

(u) In 1898 the Crown established the Rangitaiki and Waikaremoana Game Reserves within Te Urewera for the purpose of protecting imported game.[35]

(v) The Game Reserve areas together totalled 44,124 hectares and 57% of this land was un-investigated Maori customary land.[36]

(w) Following the establishment of the Game Reserves the Crown proceeded to liberate exotic species, in particular deer and opossum, within the two Reserves.[37]

(x) Between 1898 and 1950 the Crown made opossum at 22 points around Te Urewera.[38]

(y) Between 1899 and 1922 the Crown released at least 33 liberations of deer in and around Te Urewera.[39]

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[31] Coombes, #A121, p p 18, 19-21
[32] Coombes, #A121, p p 114-117 & 123
[33] Coombes, #A121, p p 40 & 125
[34] Coombes, #A121, p73
[35] Coombes, #A121, p p 77, 79 & 80
[36] Coombes, #A121, p p 77, 80 & Table 1.2 on p81
[37] Coombes, #A121, p p 83, 84 & 88-91
[38] Coombes, #A121, p p 83, 84 & Table 1.3 on p88
[39] Coombes, #A121, p p 84 & Table 1.4 on p91

(z) In 1907 the Reserves came under the direct control of the Department of Tourism and Health Resorts (THR).[40] THR pursued the Crown policies of conservation, acclimatisation and tourism.[41]

(aa) On 1 February 1907 THR took over control of the Rotorua Acclimatisation District (RAD) which by 1908 was expanded to include all of the UDNR within its boundaries.[42]

(bb) Following THR's acquisition of control of the Reserves and the RAD, it expanded its program of exotic species liberation within the UDNR.[43] In particular:

(i) On a national level THR developed two strategies for the introduction of game animals; importing and liberating stock itself; and facilitating the activity of acclimatisation societies.

(ii) THR implemented 25 red deer liberations in Te Urewera between 1901 and 1922.[44]

(cc) By 1931 the Waikaremoana, Galatea, Kaimanawa, and Rotoiti-Okareka deer herds had merged into one ever-increasing herd.[45]

(dd) THR's plans for acclimatising Te Urewera had been no more successful than in the liberation of red deer.[46]

Diversification of deer herds

(ee) Blacktail, Javan Rusa and Sika deer were liberated into Te Urewera.[47]

(ff) In 1908 THR assisted a private individual to liberate Javan Rusa deer at Galatea.[48]

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[40] Coombes, #A121, p p 110 & 111
[41] Coombes, #A121, p92
[42] Coombes, #A121, p113
[43] Coombes, #A121, p115
[44] Coombes, #A121, p p 115 & Table 1.4 on p91
[45] Coombes, #A121, p117
[46] Coombes, #A121, p117
[47] Coombes, #A121, p p 117-122
[48] Coombes, #A121, p121

Opossum

(gg) THR made 14 liberations in Te Urewera and proposed another 10 between 1906 and 1920. Official opossum liberations continued to 1925, but unofficial liberations continued until the 1950's.[49]

Crown apathy to local self-governance and consultation

100. The Crown in breach of the Treaty, its principles, and the Integrated Package of Rights [50] failed to:

(a) Ensure that the local self-governance of Te Urewera by Tuhoe, and in particular Ngati Haka-Patuheuheu, was achieved through the operation of the UDNRA or other laws, policies and programmes; and

(b) Consult with Tuhoe and especially Ngati Haka-Patuheuheu, about the creation of Game Reserve at Rangitaiki.

Particulars

Local Self-Governance

(a) The Crown promised Tuhoe, including Ngati Haka-Patuheuheu, 'local governance' and failed to elect Local and General Committees, and prescribe powers and functions for those Committees, in accordance with the intent and provisions of the Urewera District Native Reserve Act 1896 ("UDNRA"), which would have given Ngati Haka-Patuheuheu a degree of autonomy.[51]

(b) The UDNRA was eventually repealed by the Urewera Lands Act 1921-2.

(c) In his introduction to the Urewera District Native Reserve Bill in 1896, before its second reading, Carroll stated that:[52]

"We took evidence from the Natives themselves, and found that it would meet the general wish of the tribe if we conceded to them some form of local

[49] Coombes, #A121, p p 123, 129 & Table 1.3 on p88
[50] Including the agreement of 1895 with Sneddon and Carroll, Snedden's letter of 1895, the terms of the UDNRA and s.7 of the APAAA, see Coombes, #A121, pp 46, 72
[51] Coombes, #A121, p p 56 & 58
[52] Coombes, #A121, p56

government by which they can administer their own affairs within a prescribed circle."

(d) The preamble of the UDNRA included two general functions:[53]

(i) Appropriate determination of the ownership of lands within the UDNR; and

(ii) That *"provision should be made for the local government of the said district."*

(e) The UDNRA made the following provisions in relation to 'self governance':[54]

(i) Section 4 – the creation of a seven person commission to implement the UDNRA, with five positions for Tuhoe.

(ii) Section 18 – Local Committees would elect one member to be their representative on a General Committee, *"to deal with all questions affecting the reserve as a whole."*

(iii) Section 20 – the Local Committee and the General Committee shall have such powers and functions as are prescribed by the Governor in Council: Provided that the powers and functions of the Local Committee of each block shall be confined to the internal affairs of the block.

Rangitaiki and Waikaremoana Game Reserves

(f) In 1898 the Crown established the Rangitaiki and Waikaremoana Game Reserves within Te Urewera for the purpose of protecting imported game.[55]

(g) The Crown established the Game Reserves without any consultation with Tuhoe and Ngati Haka-Patuheuheu, about their creation, the rules, boundaries and administration of the Game Reserves.[56]

(h) The Game Reserve areas together totalled 44,124 hectares and 57% of this land was un-investigated Maori customary land.[57]

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[53] Coombes, #A121, p55
[54] Coombes, #A121, p p 54 & 56
[55] Coombes, #A121, p p 77, 79 & 80
[56] Coombes, #A121, p p 77, 79 & 80
[57] Coombes, #A121, p p 77, 80 & Table 1.2 on p81

(i) The Rangitaiki Game Reserve included approximately 15,920 hectares of Ngati Haka-Patuheuheu land.[58]

Crown restriction and criminalisation of traditional harvesting and management

101. The Crown in breach of the Treaty of Waitangi, its principles, and the Integrated Package of Rights [59], failed to protect and provide for Tuhoe, including Ngati Haka-Patuheuheu, traditional harvesting and management of their lands in Te Urewera and actively sought to restrict and prevent such practices.

Particulars

Restrictions and Criminalisation

(a) The Crown took no action in response to numerous petitions from Tuhoe between 1910 and 1954 seeking the right to harvest and manage Te Urewera resources.[60]

(b) It continues to be Crown policy today to prohibit cultural harvesting of Kereru and other native birds within Te Urewera, in spite of Tuhoe petitions and aspirations for sustainable traditional harvesting and ecological management of Te Urewera.[61]

(c) In 1896 for the first time the Crown imposed a closed season for hunting kereru on the UDNR under Section 7 of the Animals Protection Amendment Act 1895.[62] The Crown had power to exempt the UDNR and Game Reserves from this provision, but did not do so.[63]

(d) No applications were made to exempt the UDNR due to inadequate notification of the need to apply to the Colonial Secretary for an exemption.[64]

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[58] Coombes, #A121, Figure 1.1 on p79 & Table 1.2 on p81
[59] Including the agreement of 1895 with Sneddon and Carroll, Snedden's letter of 1895, the terms of the UDNRA and s.7 of the APAAA, see Coombes, #A121, pp 46, 72
[60] Coombes, #A121, p p 224, 225 & 228
[61] Coombes, #A121, p279
[62] Coombes, #A121, p145
[63] Coombes, #A121, p145
[64] Coombes, #A121, p p 145 & 146

(e) In 1900 the "Animals Protection Act" ("APA 1900") was amended to provide from 1901 every third year was to be a "closed season for Native Pigeon, Pukeko and Kaka".[65]

(f) Section 4(1) of the APA 1900 allowed the Crown to exempt Te Urewera and other "Native districts" but no such exemption was made for Te Urewera in 1901 or subsequently.[66]

(g) Under the APA 1900 closed seasons for Kereru were implemented in 1904 and 1907 without exemption for Te Urewera.[67]

(h) The decline in Kereru was attributed to sportspeople and commercial purposes and not traditional harvesting.[68]

(i) The Crown failed to separate cultural harvests from commercial in its legislation, policies and programmes employed in Te Urewera.[69]

(j) The Crown's legislation, policies and programmes favoured sport and tourism, but did not accept traditional practices to generate subsistence by Tuhoe and Ngati Haka-Patuheuheu.[70]

(k) The Animals Protection Act 1907 contained the following provisions relating to native game:[71]

(i) Section 6 – a prohibition on the use of traps or snares which criminalised traditional practises and the application of traditional technology in kereru harvests;

(ii) Section 19 – prevention of the sale of native game without a license, limiting the potential to raise revenue beyond subsistence level for those who could not afford a license;

[65] Coombes, #A121, p148
[66] Coombes, #A121, pp 156 & 157
[67] Coombes, #A121, p 167
[68] Coombes, #A121, p149
[69] Coombes, #A121, p168
[70] Coombes, #A121, p164
[71] Coombes, #A121, p168

(iii) Section 20, which empowered the Governor *"from time to time by notification [to] prohibit absolutely, or for such time as he thinks fit, the taking or killing of any bird indigenous to New Zealand..."*;

(iv) Section 26, which stipulated that in 1910 and every third year thereafter was to be a closed season for native game, as well as for imported game other than deer; and

(v) Section 30, which prohibited huahua by providing that no game or native game, *"frozen, chilled or otherwise, [shall] be held in possession for a greater period of seven days after the close of the season for taking or killing game..."*.

(l) Similar provisions to the Animals Protection Act 1907 were repeated in the Animals Protection Act 1908.[72]

(m) Section 4(2) of the Animals Protection Amendment Act 1910 restored the right to hold huahua, but it was illegal to harvest its ingredients.[73]

(n) Section 10(1) of the Animals Protection Amendment Act 1910 provided as follows:

"*10(1): Every person who destroys, injures, or captures any bird which is indigenous to New Zealand, or who robs or destroys the nest of any such bird, is liable to a fine not exceeding twenty pounds: Provided that the Governor may from time to time, by Order in Council, suspend the operation of this section with respect to any specified species of bird for such period in any year as he thinks fit.*"

(o) The effects of Section 10 was that all native birds were now protected unless specifically exempted from protection.[74]

(p) The first and last open season for kereru under the 1908 Animals Protection Act, as amended, was in 1911. Following the 1911 season there were no further

[72] Coombes, #A121, p178
[73] Coombes, #A121, pp 181 & 184
[74] Coombes, #A121, pp 176, 181 & 183

open seasons for kereru.[75] The full prohibition against Kereru harvests was legislated in 1921.[76]

(q) Under section 3 of the Animals Protection and Game Act 1921-22, Kereru, Kiwi and Kaka became 'absolutely protected'.[77]

(r) In 1912 the Crown opened the game reserves at Waikaremoana and Rangitaiki to deer hunting, but entirely for sport.[78]

(s) At the time of the Urewera consolidation scheme Tuhoe requested that three pua manu reserves be set aside, but this was not done.[79]

(t) Crown laws, policies and notices relating to the taking of game were not adequately publicised within Te Urewera.[80]

Unfair Harassment of Tuhoe

(u) The Crown instituted a *"fortresses and fines approach"* where protection of Te Urewera was based on a conceptualisation of Te Urewera as a fortress, excluding Tuhoe and Ngati Haka-Patuheuheu from the management and harvesting of the resources of Te Urewera, which was accompanied by fines and regulatory enforcement techniques.[81]

(v) Crown policies relating to the taking of indigenous species within Te Urewera had the following characteristics: [82]

(i) Evidence of poaching was exaggerated;

(ii) Local people were restricted from hunting exotic species in Crown reserves on the assumption that they would also hunt native game;

(iii) The Crown failed to give Ngati Haka-Patuheuheu the opportunity to manage indigenous species within their lands of Te Urewera,

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[75] Coombes, #A121, p184
[76] Coombes, #A121, p184
[77] Coombes, #A121, p186
[78] Coombes, #A121, pp 187 & 188
[79] Coombes, #A121, p194
[80] Coombes, #A121, pp 198-199
[81] Coombes, #A121, p195
[82] Coombes, #A121, p282

(w) The various Crown departments and rangers often unfairly targeted Tuhoe, including Ngati Haka-Patuheuheu, as poachers and Tuhoe were often victimised by rangers.[83]

(x) The Crown failed to appoint representatives of Tuhoe or Ngati Haka-Patuheuheu as rangers in Te Urewera until many decades after their first appointment in 1925.[84]

(y) On 30 June 1932 Pera Te Horowai of Te Whaiti and 67 others filed a petition with the House of Representatives complaining about prosecutions for the taking of kereru. [85]

(z) On 7 July 1932 Dan Manihera and 56 other signatories including Ngati Haka-Patuheuheu sent a further petition to the Minister of Maori Affairs which asked [86]

(i) That the law relating to the preservation of pigeons be suspended and the petitioners be allowed to continue their practice;

(ii) That such suspension would operate only on areas owned by the petitioners and for a definite period – one season in every two years;

(iii) That pigeons should be taken only by ancestral or traditional snaring methods.

(aa) The Crown took no action in response to the Pera Te Horowai and Dan Manihera petitions. [87]

(ab) It continues to be Crown policy today to prohibit cultural harvesting of kereru and other native birds within Te Urewera. [88]

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[83] Coombes, #A121, pp 189-195
[84] Coombes, #A121, p205
[85] Coombes #A121, p224
[86] Coombes, #A121, p225
[87] Coombes, #A121, p228
[88] Coombes, #A121, p279

(ac) Crown policy relating to taking of indigenous species within Te Urewera had the following characteristics: [89]

(i) Evidence of poaching was exaggerated;

(ii) Local people were restricted from hunting exotic species in Crown reserves on the assumption that they would also hunt native game;

(iii) Insufficient efforts have been made by the Crown to involve the Maori people of Te Urewera in the controlled management of the indigenous fauna of Te Urewera.

Crown failure to "suitably" manage exotic species and pests

102. The Crown in breach of the Treaty of Waitangi, its principles, and the Integrated Package of Rights [90] managed pest control in a culturally insensitive manner and failed to 'suitably' protect and manage Ngati Haka-Patuheuheu native forests, fisheries, fisheries, flora and fauna within Te Urewera from the damaging ecological effects of exotic species.

Particulars

(a) The Crown has failed to implement culturally appropriate, immediate and effective methods of pest control in Te Urewera, even though effective means of pest control in Te Urewera forests had been identified in the 1960's because of the following reasons:[91]

(i) Fiscal parsimony; and

(ii) Prioritising of other issues in conservation management.

[89] Coombes, #A121, p282
[90] Including the agreement of 1895 with Sneddon and Carroll, Snedden's letter of 1895, the terms of the UDNRA and s.7 of the APAAA, see Coombes, #A121, pp 46, 72
[91] Coombes, #A121, p283 & 284-441

(b) The Crown has allowed or introduced exotic species into Te Urewera especially deer and opossums, which have been managed inadequately by the Crown and caused the following effects:[92]

(i) Reduction of bio-diversity;

(ii) Deer have altered irreversibly the future species composition of the forests of Northern Te Urewera, within Ngati Haka-Patuheuheu lands;

(iii) Severe damage to the Native forest under-story. Deer impair the regeneration of many hardwood species. Deer kill many species through antler rubbing and bark-chewing, especially podocarps, horopito, rewarewa, and young beech trees;

(iv) Die-back of certain species targeted by opossums;

(v) Negative impacts on Native avifauna, including kiwi, fantail, kokako and "kahu";

(vi) Accelerated erosion and flooding. Deer destroy the protective covering of the forest floor. Deer and opossums deplete the forest of its absorptive qualities;

(vii) Ngati Haka-Patuheuheu land in the northern river valleys have been affected by the erosion and flooding indirectly caused by pest species; and

(viii) The use of 1080 poison which is culturally inappropriate to Ngati Haka-Patuheuheu and may cause secondary poisoning to dogs and other animals.

(c) In response to agricultural investment and farmers NZFS used culturally unwelcome 1080 poison in Te Urewera.[93]

(d) Because of the Crown's earlier delay's and mistakes beliefs in pest management, it has employed cheap and more culturally insensitive and

[92] Coombes, #A121, pp 283, 284 & 285-293
[93] Coombes, #A121, p349

dangerous forms of pest control like 1080 poison in its attempts to control pests in Te Urewera.[94]

(e) Prior to 1990 the Crown failed to determine culturally appropriate forms of pest control in Te Urewera.[95]

(f) The Crown introduced and/or permitted the introduction of mustelids to control rabbits even though they caused significant damage to avifauna populations.[96]

(g) The Crown sought to control exotic species in Te Urewera and their impacts on forest structure change to protect agricultural investments on the Bay of Plenty Plains.[97]

(h) The Crown's unreasonable and significant delays in attempting to manage exotic and pest species and the inadequate pest control measures actually employed have resulted in an increase in the scale of the pest problem over time rendering the task of controlling them even more costly and formidable.[98]

(i) The response of the Crown to damage to the forests of Te Urewera by introduced animals such as deer and opossum was tardy and based on a faulty understanding of the effects of introduced animals: *"for nearly four decades, there was no active strategy for the control of opossums – the result of an erroneous belief that deer control would effect this objective"*. [99]

(j) To control exotic animal species within Te Urewera the Crown has adopted a strategy of control by poisoning programmes, including in particular the use of 1080 (sodium monofloracetate). [100]

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[94] Coombes, #A121, pp 283 & 284-441
[95] Coombes, #A121, pp 283, 284 & 285-441
[96] Coombes, #A121, p155
[97] Coombes, #A121, p284
[98] Coombes, #A121, pp 283-284
[99] Coombes, #A121, p440
[100] Coombes, #A121, pp 289-90

(k) The crown has failed to undertake a collaborative approach to exotic species control in Te Urewera. [101]

(l) The use of 1080 by the Department of Conservation within Te Urewera has been conducted without adequate consultation with tangata whenua. [102]

Unreasonable Crown delays in pest control

103. The Crown through various laws, policies, programmes and departments (including the following: The Department of Internal Affairs ("IA");[103] the New Zealand Forestry Services ("NZFS");[104] the State Forestry Service ("SFS");[105] the Urewera National Park ("UNP"); the East Coast National Parks and Reserves Board ("ECNPRB"); the Lands Department ("LS") at Gisborne;[106] and the Department of Conservation ("DOC");[107] The Animals Protection and Game Act 1921-2 ("APGA"); the Noxious Animals Act 1956; the Wild Animal Control Act 1977; and the Conservation Act 1987) failed to implement immediate and effective methods of pest control in response to the numerous body of reported detrimental effects of introduced species within Te Urewera to the flora, fauna, fisheries, forests and other Taonga of Ngati Haka-Patuheuheu.[108]

Particulars

(a) The Crown denied the reported effects of opossums and deer during the first four decades of the 20th Century.[109] Ranger Cobeldick reported in 1923 that deer and opossums caused no real damage to Te Urewera, notably stating the following:[110]

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[101] Coombes #A121, p 436
[102] Coombes #A121, pp 435-6
[103] Coombes, #A121, p293
[104] Coombes, #A121, p336
[105] Coombes, #A121, p301
[106] Coombes, #A121, p379
[107] Coombes, #A121, p397
[108] Coombes, #A121, pp 283, 284-441
[109] Coombes, #A121, pp 283 & 284-441
[110] Coombes, #A121, pp296 & 293-336

"(a) After being through the bush each year for some years past, it is my considered opinion that there is very little damage being done to Native bush by the red deer in the Waikaremoana forests."

"(b) As to the question of damage to the bush by the opossums, of my own knowledge, and I claim to be an expert, the opossum does not damage or destroy any useful tree and a dead mako or ho-ho or patete shrub is very seldom seen."

(b) The increase in deer and the opossum populations during the period of limited control (1981 to 1991) by the various Crown departments, significantly affected the capacity of DOC to control pest species thereafter.[111] The Crown's failure to adequately control exotic species has significantly increased the cost and scale of the task. [112]

(c) In 1989 it was acknowledged by Wildlife Animal Control that for every year lost with no animal control, 5 years of past work would be lost.[113] In the same year no money was spent locally on opossum control with all resources diverted to goat destruction and monitoring of deer.[114]

(d) Reports about the detrimental impacts of deer and opossums on forests, fisheries, fauna, flora, land, and the ecology, began in 1914 and increased in number and frequency from then.[115]

(e) The IA responded between 1938 and 1941 with operations against red deer in Te Urewera. However, red deer numbers returned to their 1938 level by 1945. [116]

(f) Until late 1930 the State Forestry Service ("SFS") supported opossum liberations in Te Urewera.[117]

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[111] Coombes, #A121, p379
[112] Coombes, #A121, pp 283 & 284-441
[113] Coombes, #A121, p398
[114] Coombes, #A121, p401
[115] Coombes, #A121, pp 293, 294-336
[116] Coombes, #A121, pp 293 & 294-336
[117] Coombes, #A121, p301

(g) Under the APGA inconsistent open seasons for opossum hunting were sanctioned during the 1920's and 1930's because of increasing damage to orchards, rather than the ecological effects on Te Urewera.[118]

(h) Section 18 of the APGA allowed for the taking of opossums in designated districts if there had been evidence of ecological damage.[119]

(i) The Crown failed to remove protections on opossums until 1947.[120]

(j) Until 1978 NZFS had attempted to control opossums by relying on a mistaken belief that controlling deer numbers would also control opossum numbers.[121]

(k) NZFS denied habitat damage from opossums throughout the 1970's.[122]

(l) NZFS and the Forest Research Institute concluded in 1980 that deer were primarily responsible for ecological damage to Te Urewera and admitted the role of opossums to a much greater extent than had previously been the case.[123]

(m) NZFS ceased hunting operations in May 1980. There was little attempt to control deer and opossums during the 1980's, before DOC restored permanent animal control in the early 1990's.[124]

(n) The new policies and programmes of LS, NZFS and ECNPRB were chaotic and extended control over Maori land without consultation or consent of the Tuhoe people, including the use of aerial hunting and helicopter servicing of commercial shooters.[125]

(o) The widespread use of helicopters did not prevent the increasing impact of exotic animals within Te Urewera.[126]

(p) The establishment of DOC in the mid 1980's coincided with reports that deer densities had increased markedly in Te Urewera during the first half of the

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[118] Coombes, #A121, p302
[119] Coombes, #A121, p302
[120] Coombes, #A121, pp 310, 328 & 329
[121] Coombes, #A121, pp 367 & 349-366
[122] Coombes, #A121, p378
[123] Coombes, #A121, p378
[124] Coombes, #A121, pp 378 & 379
[125] Coombes, #A121, pp 380, 381 & 382-396
[126] Coombes, #A121, pp 390-394

1980's, as well as scientific evidence that opossums were a significant threat to local ecology.[127]

[127] Coombes, #A121, p397

16. RATING

103. The Crown, in breach of the principles of the Treaty, permitted local authorities (in particular the Whakatane County Council) to levy rates on Ngati Haka-Patuheuheu land placing an unfair and unjustifiable burden upon Ngati Haka-Patuheuheu.

Particulars

(a) From 1882 all Ngati Haka-Patuheuheu land within five miles of any public road, open for horse traffic was liable for rates under the Crown and Native Lands Rating Act 1882. (Accordingly this did not have practical effect on the hapu's lands in the central Urewera). [128]

(b) Over the period 1885 to 1886 £15.14s.8p was paid by Maori in the region (possibly including Tuhoe and Ngati Haka-Patuheuheu) to the Whakatane County Council. [129]

(c) The Whakatane County Council sought to collect rates on Tuhoe land where roads were maintained by that Council. [130]

(d) The Whakatane County Council had applied rates to Ngati Haka-Patuheuheu land in Waiohau and claimed around £192 in arrears to March 1931. [131]

(e) The Whakatane County Council agreed to accept £22 from the Crown in payment of all rates owed to 31 March 1931 at Waiohau. The Crown took the £22 as an interest in the Waiohau Consolidated Scheme which was repaid in

[128] Bennion, #A130, pp 14, 15, 106
[129] Bennion, #A130, pp 17-18
[130] Bennion, #A130, p108
[131] Alexander, #A74, p182; Boast, #A109, p158-159; Arapere #A26, p74

land by Ngati Haka-Patuheuheu. [132] The e Crown took £22 for rates relating to the Waiohau blocks, but in fact only £2 was actually attributed to any of those lands. [133]

(f) The rates charged by the Whakatane County Council in the late 1930's was a *"heavy burden"* upon Ngati Haka-Patuheuheu. While the rates that were levied were reduced by agreement with the Crown, such agreement was a one-off. [134]

(g) The Whakatane County Council experienced difficulties in obtaining rates from Maori. [135]

(h) While the Waiohau Development Scheme did provide some employment during the 1930's, by the 1940's it was apparent that the scheme would not provide sufficient long term employment for Ngati Haka-Patuheuheu. Many of the farms established in the scheme were uneconomic or ran poorly on marginal or infertile lands. [136]

(i) In 1937, Maori complained about the burden of Council rates. [137]

(j) By the late 1970's, Ngati Haka-Patuheuheu at Waiohau were concerned that many of their remaining lands had been logged over and would no longer provide any income to pay rates. [138]

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[132] Alexander, #74, p182; Arapere, #A26, p74; Boast, #A109, p p 158-159
[133] Alexander, #A74, p182
[134] Alexander, #A74, p203
[135] Campbell, #A55, p 126
[136] Rose, #A119, pp 230-234; Alexander, #A74, p 238
[137] Campbell, #55, p131
[138] Campbell, #A60, p157

Rates in the Urewera District Native Reserve

(k) When the Urewera Native Reserve was established in 1896, neither the Crown nor Tuhoe intended that rates should apply to the reserve land. [139]

(l) Tuhoe considered the exemption from rates was to be a long term matter and to continue with their self government of their lands. [140] There is no evidence that the Crown made Tuhoe expressly aware that the Crown expected that rates may be applied within the Urewera District Native Reserve land. [141] The Urewera District Native Reserve Amendment Act 1899 had the effect that the lands within the reserve could be subject to rates. [142]

(m) The Crown effectively exempted Tuhoe from any rates liability within the Urewera Reserve following the Urewera Lands Act 1921-1922. [143] In 1964 that exemption was removed by the Crown and reimposed on a limited number of blocks that included marae, urupa, undeveloped lands, and certain other lands.[144]

[139] Bennion, #A130, p107
[140] Bennion, #A130, p32
[141] Bennion, #A130, p107
[142] Bennion, #A130, pp 42,107
[143] Bennion, #A130, pp 58,107
[144] Bennion, #A130, pp 93,109

17. UREWERA NATIONAL PARK

104. The Crown, in breach of the Treaty, established the Urewera National Park without adequately recognising nor providing for Ngati Haka-Patuheuheu traditional use and management rights, interests and resources in the lands.

Particulars

(a) Birds traditionally formed one of the chief items of diet of the Tuhoe people, including Ngati Haka-Patuheuheu, and were harvested under tikanga Maori. [145]

(b) The National Parks Act 1952 was enacted on 23 October 1952, which provided the Crown with the means to establish and take effective management of National Parks within New Zealand. [146]

(c) The National Parks Act 1952 had almost no provision for public (especially Maori) participation of any kind, and its associated General Policy was focussed on harnessing non-Maori expertise to plan for conservation problems. [147]

(d) The National Parks Act reflected a particular preservationist and conservationist attitude to land management reflective in turn of entrenched cultural values towards *"wilderness"*. [148]

(e) The Urewera National Park was established under the National Parks Act 1952 in July 1954 and it initially comprised around 121,000 acres. Later in August 1957, the Crown extended the park by the addition of approximately 330,000 acres of Crown land. In 1971, the bed of lake Waikaremoana leased by the Crown was placed under the administration of the National Park Board that

[145] Coombes #A121, pp 138, 139, 140
[146] Campbell, #A60, p41
[147] Coombes, #A133, p549
[148] Coombes, #133, pp 10-11; National Parks Act 1952, s 3(2), cited Coombes.

governed the Urewera National Park. [149]

(f) The National Parks Act 1980 contained more comprehensive provisions for National Parks management than did the 1952 Act but failed to distinguish between general rights and specific Treaty-based rights. [150]

(g) The National Parks General Policy created pursuant to the National Parks Act 1980 did refer to Maori issues but failed to contain a reference to the Treaty of Waitangi. [151]

(h) The Urewera National Park effectively excluded Tuhoe, and including Ngati Haka-Patuheuheu, from lands that were crucial to their survival. [152]

(i) The policy and legislation governing the Urewera National Park, and its management and control in practice, failed to acknowledge the kaitiaki status of Tuhoe and specifically Ngati Haka-Patuheuheu over their lands. [153]

(j) The Urewera National Park, policy and practice, had a destructive impact upon Tuhoe customary and traditional bird gathering practices. Such practices were not accommodated in the policy, practice, management or control of the Urewera National Park. Nor were such practices and traditional use rights in the Urewera acknowledged or recognised in legislation governing the Urewera National Park. In practice, Ngati Haka-Patuheuheu have had their access to resources and their ability to carry out customary and traditional use rights such as food gathering and bird catching restricted in the Urewera National Park. [154]

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[149] Campbell, #A60, pp 48,75; Boast, #A109, p264
[150] Coombes, #A133, p550
[151] Coombes, #A133, p550
[152] Boast, #A109, p267
[153] Coombes, #A133, p561
[154] Coombes, #A133, pp 561-563; Campbell, #A60, pp 168-169

(k) In cases where Urewera Maori, including Ngati Haka-Patuheuheu, were granted concession or exemptions to carry out traditional practices within the Urewera National Park, such concessions or exemptions were granted begrudgingly for political purposes. [155]

(l) The granting of concessions or exemptions for Urewera Maori were not based upon tangata whenua needs and rights under the law and in terms of the Treaty. [156]

105. The Crown, in breach of the Treaty, has failed to provide Ngati Haka-Patuheuheu or Tuhoe generally with any, or any meaningful, input or role in the administration and management of the Urewera National Park and therefore the Crown has failed to adequately or properly recognise Ngati Haka-Patuheuheu rangatiratanga within those areas of the Urewera National Park that are within the rohe of Ngati Haka-Patuheuheu.

Particulars

(a) The legislation governing the Urewera National Park does not provide for any effective participation by Tuhoe, and specifically Ngati Haka-Patuheuheu, in the ongoing administration and management of the Urewera National Park. [157] The formulation of policy relating to the Urewera National Park has been dominated by third parties, especially environmental and recreational groups, rather than Ngati Haka-Patuheuheu or Tuhoe. [158]

(b) The administration of Urewera National Park has failed to accommodate the cultural and traditional practices of Te Urewera Maori, *"in part because no*

[155] Coombes, #A133, p563
[156] Coombes, #A133, p563
[157] Campbell, #A60, p43
[158] Coombes, #A133, pp 561-562, 565

attempt was made to understand their value both as cultural expression and means of subsistence." [159]

(c) Administration of Te Urewera National Park has shown *"little institutional trust in Maori as kaitiaki and land managers."* [160]

(d) The National Park Board, the Regional Conservation Boards and the Department of Conservation have all failed to involve Ngati Haka-Patuheuheu, or Tuhoe generally, at more than a superficial level of engagement predominantly involving mere consultation. [161] The Conservation Act 1987, now the governing Act for National Parks management, does contain a statutory reference to the Treaty of Waitangi. However, the 1987 Act has not led to significant changes in the broad philosophy of National Park administration, including the administration of Urewera National Park. [162]

(e) During the 1990's the Department of Conservation attempted to develop *"better relationships with tangata whenua under the new management plan"*. [163] However, the Department of Conservation *"has abandoned this search for better and more formal relationships (with tangata whenua) until the [Waitangi] Tribunal has heard claims relating to the Park, and the new plan is little more than a conservative place-holder"*. [164]

(f) In effect, Ngati Haka-Patuheuheu, and Tuhoe generally, were excluded from any direct and meaningful administration and management of the Urewera National Park. [165]

(g) Te Urewera National Park as a management entity is *"larger than its boundaries"*. [166] Crown land managers have adopted policies which:

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[159] Coombes, #A133, p550
[160] Coombes, #A133, p2, 253
[161] Coombes, #A133, p561
[162] Coombes, #A133, p550
[163] Coombes, #A133, p386
[164] Coombes, #A133, p550
[165] Boast, #A109, p267; Campbell, #A60, p43
[166] Coombes, #A133, p2

(i) Sought to incorporate remaining areas of Maori land within Te Urewera into the National Park; [167] and

(ii) Involved collusion with other government agencies in seeking to restrict the development by Te Urewera Maori of their remaining lands. [168]

(h) Park management *"has not always been sensitive to the cultural assets on, or the historical significance of ancestral lands, in the conservation estate."* [169] In particular, the Department of Conservation *"has adopted an ahistorical approach to the park which is also associated with its assumption that park management can be separated from conflicts about park ownership."* [170]

(i) The experience of Maori owners throughout the Urewera National Park, and therefore including Ngati Haka-Patuheuheu, has been of little participation or control of the processes and conflicts which may affect their economy and their lifestyles. [171]

(j) The policy relating to the Urewera National Park also affected Tuhoe lands, including those of Ngati Haka-Patuheuheu, within the boundaries of the Urewera National Park or within the vicinity of the park, and the aspirations of Tuhoe, including Ngati Haka-Patuheuheu, persons relating to their lands became peripheral or subordinate to the main conservation purpose of the Urewera National Park. [172]

(k) Cultural harvesting of indigenous plant resources by tangata whenua was prohibited from 1954 to 1989. The 1989 National Park management plan permitted cultural harvesting with prior approval of park management and provided that the particular species harvested were not rare, vulnerable,

[167] Coombes, #A133, p1, 38-47
[168] Coombes, #A133, p1 66-84
[169] Coombes, #A133, p2 133-55
[170] Coombes, #A133, p133
[171] Campbell, #A60, pp 158, 169

endangered or otherwise protected, and that the demands are not excessive. [173] However the rights of cultural harvest remain tenuous. *"Provisions for use of Park resources were not based in an assessment of Treaty rights, but were rather nominal concessions from a dominant paradigm and are today, therefore, potentially tenuous and insecure."* [174]

(l) The effect of the general conservation policy relating to the Urewera National Park upon Tuhoe, including Ngati Haka-Patuheuheu lands within the boundaries of the park or adjoining the park included a prohibition against the milling of timber on Tuhoe lands that existed between 1961 and 1993 under the Soil Conservation and Rivers Control Amendment Act 1959. [175]

[172] Boast, #A109, p323
[173] Coombes, #A133, p455
[174] Coombes, #A133, p3
[175] Campbell, #A60, p165; Boast, #A109, p323