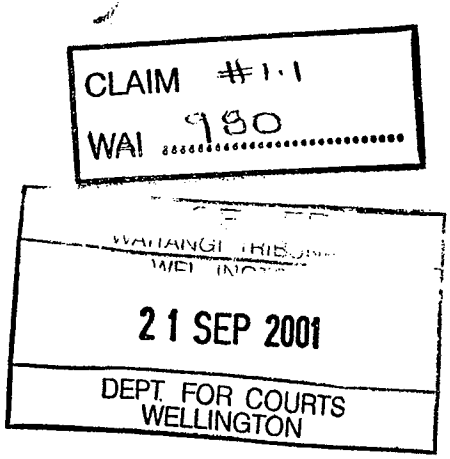
OFFICIAL C 2001/09/01547

Ngati Tuteniu Trust
c/o Te Kapua Hohepa-Watene
29 Sala Street
ROTORUA



18 September 2001

To: **The Registrar**
Waitangi Tribunal
PO Box 5022
Wellington

We;

Full Name	Address	Occupation	Tribe
Tuteniu Stephen Hohepa	RD4 Te Ngae Rd Rotorua	Food Industry	Ngati Tuteniu
Te-Kapua-ki-Hikurangi Carolyn Hohepa-Watene	29 Sala St, Rotorua	PhD Student	Ngati Tuteniu

For ourselves and Ngati Tuteniu, of which we are members, we claim we are prejudicially affected by;

The Crown's proclamation of roads in the Thermal Springs District to be public roads in terms of the Thermal Springs District Act, 1910, published in the New Zealand Gazette, 28 September 1911.

We claim that this action is contrary to the prinicples of Article 2 of the Treaty of Waitangi.

We reserve leave to propose relief at a later date if our claim proves to be well founded.

We wish the Tribunal to commission a researcher to report on our claim.

We ask for permission to amend this claim at a later date if necessary.

The Tribunal is advised that our legal representative is;

Annette Sykes of
Rangitauira and Co.
1154 Hinemoa Street
Rotorua
Ph. 3480032 or 021 243 2172

We wish the claim to be heard at; Mataikotare Marae, Rotorua

We believe the following organisations should be notified of this claim;

1, Transit NZ
2, Rotorua District Council
3, Telecom NZ Ltd
4, United Networks Ltd

We can be contacted at the following address;
Ngati Tuteniu Trust
c/o Te Kapua Hohepa-Watene
29 Sala Street
ROTORUA

Signed on behalf of Ngati Tuteniu at 29 Sala Street, Rotorua

on this 18th day of September, 2001

T.S. Hohepa
.....
(Tuteniu Stephen Hohepa)

T. e Hohepa-Watene
.....
(Te Kapua Hohepa-Watene)

Part of the road marked NO has been closed vide proclamation by 9194 15/10/1936

Part of the road marked LM has been closed see Proclamation by 9322 31/3/1937

S.369322 Order in Council declaring part of the within road (2.8) to be Government road and to be stopped. Entered 3.3.1967 at 9

S. 433034 Gazette notice proclaiming closed pa of the road situated in Rotorua District e entered 27/11/1968 at 10.45 o/c

S. 655486 Stopping vesting and of Hawai Street adjoining L
DPS. 17955 produced 10/4/74 at 11.30 o/c.
C/T. 17A/675 issued vide S. 655818.

[Extract from *New Zealand Gazette*, 28th September, 1911.]

Proclaiming Roads in the Thermal Springs District to be Public Roads.

(L.S.) ISLINGTON, Governor.

A PROCLAMATION.

WHEREAS it is provided by the Thermal Springs Districts Act, 1910 (hereinafter referred to as "the said Act"), that the Governor may proclaim as a public road any road in any district which at any time before the passing of this Act is or has been subject to the Thermal Springs Districts Act, 1908, or to the Thermal Springs Districts Act, 1881, if that road is in use as a public highway at the passing of this Act, and if public money or the money of any local authority has before the passing of this Act been expended in the formation, construction, improvement, or maintenance thereof; and that every such road may, irrespective of the extent of its formation or use at the passing of this Act, be proclaimed as of the width of thirty-three feet on each side of the centre-line of the formation thereof as existing at the passing of that Act;

And whereas the roads described in the Schedule hereto are in a district which, before the passing of the said Act, has been subject to the Thermal Springs Districts Act, 1908, or the Thermal Springs Districts Act, 1881, and were in use as public highways at the passing of the said Act, and public money has, before the passing of the said Act, been expended in the formation, construction, improvement, and maintenance of such roads:

Now, therefore, I, John Poynder Dickson-Poynder, Baron Islington, the Governor of the Dominion of New Zealand, in pursuance and in exercise of the powers and authorities in me vested by the Thermal Springs Districts Act, 1910, and of every other power and authority in anywise enabling me in this behalf, do hereby proclaim as public roads the roads described in the Schedule hereto, and I do also proclaim such roads as of the width of thirty-three feet on each side of the centre-line of the formation thereof as existing at the passing of the said Act.

SCHEDULE.

ALL that portion of the road known as the Tirau-Rotorua Road, situated in the Rotorua County, and commencing at its junction with the Tauranga-Rotorua Road in Block XVI, Rotorua Survey District, and proceeding thence in a north-westerly direction generally through Blocks XVI, XV, XI, and X, Rotorua Survey District, to its junction with the western boundary of the Rotorua County, being a distance of about nine miles and a half.

Also all that portion of the road known as the Rotorua-Maketu Road, situated in the Rotorua County, and commencing at its junction with the Rotorua-Whakatane Road commencing at its junction with the [illegible] Road in Block XIV, Rotoiti Survey District, and proceeding thence in an easterly direction generally through Blocks XIV, X, XI, and XII, Rotoiti Survey District, and Blocks IX and X, Rotoma Survey District, to its junction with the eastern boundary of the Rotorua County, being a distance of about nineteen miles.

Also all that portion of road known as the Rotorua to Galatea Road, situated in the Rotorua County, and commencing at its junction with the road forming the north-western boundary of Section 6, Blocks II and III, Paeroa Survey District, and proceeding thence in a south-easterly direction generally through Blocks II, III, VII, and VIII, Paeroa Survey District, and Block V, Kaingaroa Survey District, to its junction with the northern boundary of Paeroa East No. 2B Block, being a distance of about eleven miles.

Also all that portion of road known as the Rotorua to Taupo Road, *via* Atiamuri, situated in the East Taupo County, and commencing at its junction with the Rotorua to Taupo Road, *via* Waiotapu, and proceeding thence in a north-westerly direction generally through Block II, Tauhara Survey District, Blocks XIV and XVII, Tirau Survey District, to its junction with the north-eastern boundary of the Wairakei Block, being a distance of about five miles.

Also all that portion of road known as the Taupo-Napier Road, situated in the East Taupo County, and commencing at its junction with the Taupo-Napier Road, and proceeding thence in a south-easterly direction generally through Blocks II, VI, and VII, Tauhara Survey District, to its junction with the northern boundary of Tauhara Middle No. 4A Block, being a distance of about three miles.

Also all that portion of road known as the Taupo Road, situated in the East Taupo County, and commencing at its junction with Kaimanawa Street in the Town of Taupo, and proceeding thence in a northerly direction generally through Blocks II and VI, Tauhara Survey District, to its junction with the northern boundary of Tauhara Middle "A" Block, being a distance of about four miles.

All in the Auckland Land District; as the same are more particularly delineated on the plan numbered 29512, deposited in the office of the Minister of Public Works, at Wellington, in the Wellington Provincial District, and thereon coloured burnt sienna and marked AB, CD, EF, GH, JK, LM, and NO respectively.

Given under the hand of His Excellency the Right Honourable John Poynder Dickson-Poynder, Baron Islington, Governor and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies, and issued under the Seal of the said Dominion at the

PUBLIC WORKS DEPARTMENT, WELLINGTON

5th. October, 1

Re Roads in Thermal Springs District.

Memorandum for

The District Land Registrar,

Auckland.

I forward herewith for registration in your office plan and copy of a Proclamation, dated the 18t ultimo and signed by His Excellency the Governor, pro claiming roads in the Thermal Springs District to be public roads in terms of the Thermal Springs District Act, 1910.

Will you please be good enough to let me know when the Proclamation has been registered.

Enclos:
(a) Copy of P.W.D. 29512.
(b) " " Proclamation.

W. D. Short

Asst. Under Secretary.

New Zealand.

ANALYSIS.

1910, No. 69

Title.

AN ACT to repeal the Thermal Springs Districts Act, 1908, and to make other Provisions in lieu thereof.

[*3rd December, 1910.*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement.

1. (1.) This Act may be cited as the Thermal Springs Districts Act, 1910, and shall be read together with the Native Land Act, 1909.

(2.) This Act shall come into operation on the first day of February, nineteen hundred and eleven.

Repeals.

2. The enactments mentioned in the First Schedule hereto are hereby repealed to the extent specified in that Schedule.

Restrictions on alienation of Native land having thermal or mineral water thereon.

3. (1.) Before confirming any alienation of any Native land which at the commencement of this Act or at any time previously thereto is or has been subject to the Thermal Springs Districts Act, 1908, or the Thermal Springs Districts Act, 1881, and before effecting an alienation of any such land under section three hundred and fifty-six of the Native Land Act, 1909, it shall be the duty of the Maori Land Board to make due and proper inquiry for the purpose of ascertaining whether there is situated on the said land or contiguous thereto any thermal or mineral spring, river, stream, lake, pool, geyser, or other thermal or mineral water.

(2.) Where any Native land which at the commencement of this Act or at any time previously thereto is or has been subject to the Thermal Springs Districts Act, 1908, or the Thermal Springs Districts Act, 1881, has situated thereon or contiguous thereto any thermal or mineral spring, river, stream, lake, pool, geyser, or other thermal or mineral water, no alienation of that land shall, without the precedent consent of the Governor in Council, be confirmed by a Maori Land Board under Part XIII of the Native Land Act, 1909, or effected by a Maori Land Board under section three hundred and fifty-six of that Act; and such consent may be granted or refused by the Governor in Council as he thinks fit..

(3.) No alienation confirmed or effected by a Maori Land Board shall be invalidated by any breach of the provisions of this section, but any person who wilfully commits, aids, abets, instigates, procures, or attempts to procure any breach of this section, or is otherwise wilfully a consenting party to any such breach or attempted breach, shall be guilty of an indictable offence punishable in any case in which the defendant is a body corporate by a fine not exceeding one thousand pounds, and in any other case by a fine not exceeding five hundred pounds or by imprisonment with or without hard labour for a term not exceeding two years.

(4.) On the conviction of any person for any such offence, any right, title, or interest acquired by him in breach of this section in any land shall by virtue of that conviction be forfeited to and shall vest in His Majesty the King, subject, however, to any right, title, estate, or interest theretofore acquired for value and in good faith by any other person.

Certain Native lands to become subject to Part XV of the Native Land Act, 1909.

4. With respect to any land which at the commencement of this Act or at any time previously thereto is or has been subject to the Thermal Springs Districts Act, 1908, or the Thermal Springs Districts Act, 1881, and which is or has been subject to any Warrant or other authority of the Governor issued under section fifteen of the Maori Land Laws Amendment Act, 1908, delegating to a Maori Land Board any of the powers of the Governor as to the leasing of such land (whether such Warrant or authority is still in force at the commencement of this Act or not), the following provisions shall apply:—

(*a.*) The Governor may from time to time, and at any time within three months after the commencement of this Act, by Order in Council declare that the said land or any part or parts thereof shall be subject to Part XV of the Native Land Act, 1909 (relating to land vested in Maori Land Boards for the purpose of leasing), and the land to which any such Order in Council relates shall thereupon become subject to that Part of the said Act accordingly.

(*b.*) Every such Order in Council shall be gazetted, and shall be laid before Parliament as soon as practicable after the making thereof.

(*c.*) All land which so becomes subject to Part XV of the Native Land Act, 1909, shall, without transfer or other instrument of assurance, become vested in the Maori Land Board of the district in which it is situated for a legal estate in fee-simple.

(*d.*) The land so vested in a Board shall be held by the Board in trust for the owners beneficially entitled thereto in accordance with their respective interests.

(*e.*) The vesting of any such land in the Board shall not affect any valid lease, mortgage, charge, or incumbrance to which the land is subject at the date of that vesting, or the right of any person to enforce any valid contract made with respect to the land before it became so vested.

(*f.*) Section two hundred and seventy-two of the Native Land Act, 1909 (relating to registration of title) shall apply to land vested in a Maori Land Board under this section, save that on every certificate of title there shall be written a statement that the land is subject to Part XV of the Native Land Act, 1909.

(*g.*) All land so vested in a Maori Land Board shall be held and administered by the Board in accordance with Part XV of the said Act accordingly.

Certain Native lands to become subject to Part XVI of the Native Land Act, 1909.

5. Section two hundred and ninety-five of the Native Land Act, 1909 (relating to the power of the Governor to declare land to be subject to Part XVI of that Act on the recommendation of the Commission referred to in that section), shall extend and apply to any land which at the commencement of this Act or any time previously is or has been subject to the Thermal Springs Districts Act, 1908, or the Thermal Springs Districts Act, 1881, and in respect of which the said Commission had, before the commencement of the Native Land Act, 1909, reported to the Governor that the said land should be reserved for the use and occupation of the owners; and on any Order in Council being made under the said section in respect of any such land the provisions of Part XVI of the Native Land Act, 1909, shall apply accordingly.

Public reserves.

6. All lands which before the passing of this Act, by any Proclamation, Order in Council, Warrant, or other act of authority, have been reserved, set apart, or dedicated by the Governor for any of the purposes mentioned in the Second Schedule to the Public Reserves and Domains Act, 1908, in any district which at the date of that Proclamation, Order in Council, Warrant, or act of authority was subject to the Thermal Springs Districts Act, 1908, or the Thermal Springs Districts Act, 1881, are hereby declared to be public reserves within the meaning and for the purposes of the Public Reserves and Domains Act, 1908, and are hereby vested in His Majesty the King accordingly; and every such Proclamation, Order in Council, Warrant, and other act of authority is hereby validated accordingly as from the date thereof.

Proclamation of roads.

7. (1.) The Governor may proclaim as a public road any road in any district which at or any time before the passing of this Act is or has been subject to the Thermal Springs Districts Act, 1908, or to the Thermal Springs Districts Act, 1881, if that road is in use as a public highway at the passing of this Act, and if public money or the money of any local authority has before the passing of this Act been expended in the formation, construction, improvement, or maintenance thereof.

(2.) Every such road may, irrespective of the extent of its formation or user at the passing of this Act, be proclaimed as of the width of thirty-three feet on each side of the centre-line of the formation thereof as existing at the passing of this Act, or as of such lesser width as the Governor thinks fit:

Provided that in the Town of Rotorua as defined by the Rotorua Town Act, 1907, no road shall be so proclaimed as of a greater width than that which is in public use at the passing of this Act.

(3.) Every road so proclaimed shall thereupon become a public highway in accordance with the tenor of the Proclamation.

Validation of leases.

8. (1.) No lease which before the passing of this Act has been granted by the Governor or by a Maori Land Board, of any land which at the time of the grant of that lease was subject to the Thermal Springs Districts Act, 1908, or to the Thermal Springs Districts Act, 1881, shall be questioned or held invalid in any Court or in any proceedings by reason merely of the fact that the grant of that lease may have been *ultra vires* of the Governor or of the Maori Land Board; and every such lease may, if validly granted, or if validated by this section, be registered under the Land Transfer Act, 1908, in the same manner as nearly as may be as if it was a lease of Crown Lands under the Land Act, 1908.

(2.) Every authority given by the Governor before the commencement of this Act under paragraph (*b*) of section fifteen of the Maori Land Laws Amendment Act, 1908, for the leasing of land by the owners thereof may be acted on and shall continue to have the same effect as if this Act had not been passed.

(3.) When any application has been made to the Governor before the commencement of this Act for his authority under paragraph (*b*) of section fifteen of the Maori Land Laws Amendment Act, 1908, the Governor may grant his authority accordingly, and the same may be acted on and shall have the same effect as if this Act had not been passed.

Mokoia Island to be a Native reservation.

9. (1.) That area of land known as Mokoia Island, in Lake Rotorua (being now customary land), shall, on the making of a freehold order in respect thereof, be deemed for all purposes to be a Native reservation set apart under section two hundred and thirty-two of the Native Land Act, 1909, and shall be inalienable otherwise than by will, anything in the said Act to the contrary notwithstanding.

(2.) Nothing in the Scenery Preservation Act, 1908, or in the Public Works Act, 1908, or in any amendment of either of those Acts, shall extend or apply to the said Mokoia Island (whether before or after it has so become a Native reservation) so as to authorize the taking thereof or any part thereof for the purposes of scenery preservation, recreation, plantation, or any other like purpose.

(3.) Nothing in the Rating Act, 1908, or in any amendment of that Act, shall extend or apply to the said Mokoia Island.

The Town of Rotorua and adjacent land to be Crown lands.

10. (1.) The land described in the Second Schedule hereto (being Native land of which most of the undivided interests have been already acquired by way of purchase by the Crown) is hereby declared to be Crown land instead of Native land, and is hereby vested absolutely in His Majesty the King accordingly, subject

(4.) If the Board confirms the resolution, the resolution shall then be submitted by the Board to the Native Land Purchase Board (hereinafter mentioned), and all such further proceedings may be taken therein as are authorised by Part XIX of this Act in that behalf.

In pursuance of a confirmed resolution the Board may, as the agent of the owners, execute an instrument of alienation.

356. (1.) No meeting of assembled owners shall be summoned under this Part of this Act to pass any such resolution as is referred to in paragraph (*f*) of section three hundred and forty-six of this Act (relating to the approval of a proposed alienation), except upon the written application of some party to the proposed alienation, who shall at the same time pay to the Board the prescribed fee.

REFER TO ACT 1923 No. 32, Sec. 70 (4)

(2.) The application shall contain a statement of all the material terms and conditions of the proposed alienation.

(3.) The application shall then be considered by the Board, and if it is of opinion that the proposed alienation is one which may lawfully be made, and which is not contrary to the public interest or to that of the Native owners, the Board may call a meeting of the owners to consider the proposal. No such approval by the Board of any application shall take away or affect the right of the Board to disallow any resolution of acceptance passed by the assembled owners.

(4.) The proposal may be accepted by the assembled owners either with or without modifications, and the terms of the proposal as so accepted shall be set out in the written resolution.

(5.) If the resolution is confirmed by the Board with respect only to the residue of the land after the cutting-out of the shares of any of the owners under the provisions in that behalf hereinbefore contained, the Board may so confirm the same, subject to any modifications which in the opinion of the Board are rendered just or necessary by reason of that circumstance.

(6.) On the confirmation of any such resolution the Board shall become, without further authority than the resolution, the agent of the owners for the time being to execute in the name of the Board an instrument of alienation in accordance with the terms of the resolution as so confirmed, and the owners shall not be competent to revoke the authority of the Board in that behalf.

(7.) Every such instrument of alienation may contain all such

Vol. 1909, p. 245.
Repealed vide Sec. 7 (j) of Act 1929, No. 19. Section 358.

Board and the other p...

REPEALED: and in Substitution therefor: Act 1915 No. 63 Sec. ... Page ...

(8.) No such instrument of alienation shall be executed by ... Board until the Board is satisfied by statutory declaration or otherwise that no person acquiring an interest in Native land under the alienation is prohibited from acquiring that interest by Part XII of this Act.

(9.) The resolution or the confirmation thereof shall not be deemed to constitute a contract or to impose any obligation upon the owners, or upon the Board, or upon any party to the proposed alienation, to carry the same into effect.

(10.) Every instrument of alienation executed in accordance with the foregoing provisions by the Board as the agent of the owners shall, without confirmation under Part XIII of this

have the same force and effect, and may be registered in manner, as if it had been lawfully executed by all of the owners their trustees, and as if those owners or trustees had been fully competent in that behalf. The production of any certificate of title issued in respect of the land affected by the instrument of alienation shall not be necessary for the registration of that instrument.

(11.) Every instrument of alienation so executed by a Board shall contain a statement or recital that the Board is duly authorised to execute the same as the agent of the owners under this Part of this Act, and every such statement or recital shall be accepted by the District Land Registrar and by all Courts as sufficient *prima facie* evidence of the facts so stated or recited.

(12.) Except as against a person guilty of fraud no instrument of alienation executed by the Board as the agent of the owners under this section shall be invalidated by any breach or non-observance of the provisions of this Part of this Act prior to the confirmation of the resolution by the Board, or by any repugnancy between the terms of the resolution and the terms of the instrument of alienation executed in pursuance thereof.

(13.) This section shall extend and apply with all necessary modifications to any case in which the land so to be alienated is already vested in the Board under Part XIV or Part XV of this Act, save that no alienation shall be so made of any land which is vested in a Board for sale in pursuance of a report of the Commission referred to in Part XIV of this Act.

AMENDED by Act 1920 No. 63 Sec 5

In pursuance of a confirmed resolution the Governor may authorise Board to sell land subject to Part XIV of this Act.

357. (1.) On the confirmation of any such resolution as is referred to in paragraph (*g*) of section three hundred and forty-six of this Act, the Governor may, if he thinks fit, by Order in Council authorise the Board to sell the land affected by the resolution in accordance with Part XIV of this Act, and the land shall thereupon become subject to Part XIV of this Act, and may be sold by the Board accordingly.

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(2.) Every such Order in Council shall be conclusive proof that all conditions precedent to the making thereof have been duly fulfilled, and the validity of any such Order shall not be questioned in any Court.

Powers of Board under this Part of this Act to be exercised by the Native Land Court in respect of land in the South Island.

358. (1.) All the powers conferred by this Part of this Act upon a Maori Land Board shall, in the case of land situated in the South Island or in any place not forming part of a Maori land district, be exercised by the Native Land Court, and for this purpose every reference in this Part of this Act to a Board shall be construed as a reference to the Court, and every reference to the President of the Board shall be construed as a reference to a Judge or Commissioner of the Court.

REFER TO 1927 9 INSET

(2.) No appeal shall lie to the Appellate Court from any act or determination of the Native Land Court in the exercise of the powers conferred upon it by this section.

(3.) Whenever, under the foregoing provisions of this Part of this Act, the Court is empowered to exercise any jurisdiction on the application of a Maori Land Board, the Court may, when exercising under this section the powers of a Board, exercise that jurisdiction of its own motion.