IN THE WAITANGI TRIBUNAL **Wai 1750**
I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI **Wai 339**

In the Matter	of the Treaty of Waitangi Act 1975
And	
In the Matter	of the North Eastern Bay of Plenty Inquiry (Wai 1750)
And	
In the Matter of	of a claim by Dean Flavell and Miranda Horan on behalf of the Hiwarau C Trust (Wai 339)

AMENDED STATEMENT OF CLAIM OF DEAN FLAVELL AND MIRANDA HORAN ON BEHALF OF THE HIWARAU C TRUST

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MAY IT PLEASE THE TRIBUNAL

1. This Amended statement of Claim is filed by Dean Flavell and Miranda Horan for Wai 339 on behalf of the Hiwarau C Trust (**the Claimants**).

The Claim

2. This Amended Statement of Claim amends the earlier statement of claim that was filed in the Tribunal by Tuiringa Momoko and was registered as Wai 339.[1] The particulars in this Amended Statement of Claim broaden the scope of the claim beyond the matters raised in the original statement of claim. However, this Amended Statement of Claim does not negate or replace it.

3. This Claim concerns the various acts and omissions of the Crown against the Claimants, whose interests include the Hiwarau C block and Hokianga Island (**the Claim**).

Jurisdiction

4. The Claim meets the elements required of a claim under section 6(1) of the Treaty of Waitangi Act 1975, namely that:

    a. the Claimants are Māori; and

    b. the Claimants have been and continue to be prejudicially affected by Crown actions and inactions in relation to raupatu of land and administration of land by Crown and/or Crown-delegated authorities. These are in breach of the principles of Te Tiriti o Waitangi.

Te Tiriti o Waitangi and its Principles

5. In breach of the principles of Te Tiriti o Waitangi, the Claimants have been and

[1] Statement of claim (Wai 339, 1.1, 17 December 1992).

continue to be prejudicially affected by the various acts and omissions of the Crown, or its agents and delegates, including its regulations, orders, proclamations, other statutory instruments, policies, and practices and policies. In reference to Te Tino Rangatiratanga me te Kāwanatanga, the Claimants say that the following Te Tiriti principles are applicable to this claim:

Principle of Tino Rangatiratanga

6. Upon signing Te Tiriti o Waitangi in 1840, rangatira did not cede sovereignty to the Crown. Māori were to sustain their authority over their lands and people. In part one of the Report on Stage Two of Te Paparahi o Te Raki, the Tribunal concluded that: [2]

> *Rangatira agreed to share power with the Governor, though they 'had different roles and different spheres of influence'. They were to retain their independence and chiefly authority over their people and within their territories*.

Active Protection

7. The Crown has a duty to actively protect Māori interests, including land and water interests and Māori exercise of tino rangatiratanga. This principle recognises a protective role that the Crown has towards Māori, but at the same time, in no way undermines the right of Māori to exercise tino rangatiratanga and flows from the preamble of Te Tiriti:

> *Ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki*
>
> *to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order*

8. The Claimants say that the principle of active protection has been sparingly observed by the Crown, if at all, and only where it is convenient to the

[2] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry – Pre-publication Version* (Wai 1040, 2022) at 6.

Crown's interests. When and where the Crown properly exercises the principle of active protection, Māori tino rangatiratanga can be enhanced. Active Protection is a fundamental principle that naturally overlaps with other principles of Te Tiriti.

Partnership

9. The principle of partnership provides a basis for the relationship between Māori and the Crown, and imposes on both parties the need to consult and work together in decisions that affect one another. The principle of partnership inherently recognises Māori acknowledgement of the Crown's kāwanatanga in New Zealand, but this acknowledgement does not come at the cost of ceding tino rangatiratanga or sovereignty. The Crown's authority was one that was not superior to Māori tino rangatiratanga, but qualified rangatiratanga. The Tribunal stated in part one of the Report on Stage Two of Te Paparahi o Te Raki that: [3]

> *The treaty partnership, therefore, required the cooperation of both parties to agree their respective areas of authority and influence, and both parties were required to act honourably and in good faith. The Crown could not unilaterally decide what Māori interests were or what the sphere of tino rangatiratanga encompassed: that was for Māori to negotiate with the Crown. Shared spheres of authority, as we pointed out in stage 1 of our inquiry, must also be agreed.*

Kāwanatanga

10. In accordance with Te Tiriti, the principle of Kāwanatanga gave the Crown the right to exercise authority over British subjects whilst protecting Māori interests. However, the self-serving interpretation of kāwanatanga by the Crown was to assert its own sovereignty over New Zealand and its people. The Tribunal stated in part one of the Report on Stage Two of Te Paparahi o Te Raki that: [4]

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[3] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga* at 74.
[4] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga* at 74.

> *The Crown's treaty obligation was accordingly to foster tino rangatiratanga, not to undermine it. Its duty from the outset was to ensure treaty rights and guarantees were recognised in its laws and policies – especially those affecting hapū autonomy and tikanga, and hapū retention, control and management of their lands and resources, including the determination of titles. Laws must be equitable.*

Equity

11. Article 3 of Te Tiriti guaranteed equitable treatment of Māori with citizenship rights and privileges of British. However, simple equal treatment for Māori and non-Māori population groups is unlikely to satisfy the principle of equity. It is the Crown's duty to provide fair and equitable treatment to Māori, not just the same treatment provided to other citizens. The guarantee of tino rangatiratanga, and the undertaking that tikanga would be recognised and respected, also require the Crown to focus attention and resources to address the social, cultural, and economic requirements and aspirations of Māori.[5]

Mutual recognition and respect

12. The Claimants say that the signing of Te Tiriti recognised in part the intention of Māori and the Crown to formalise their relationship as one based on mutual recognition and respect. Mutual recognition and respect remain vital qualities in the Tiriti relationship and were described by the Tribunal in part one of the Report on Stage Two of Te Paparahi o Te Raki: [6]

> *In our view, it was the duty of the Crown at the outset to recognise and respect mana, tikanga, kawa, mātauranga, kaitiakitanga, and te reo Māori. At the heart of Māori values and the Māori way of life was and is tikanga. The Crown must recognise and respect tikanga Māori values and Māori systems of law.*

Mutual benefit and right to development

13. Māori expected to benefit and develop from the presence of the British

[5] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga* at 86.
[6] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga* at 78.

kāwana, increased trade opportunities, the introduction of new technologies and techniques and new settlers. The Crown had a duty to ensure that Māori retained land needed for their contemporary and future economic well-being. Māori had a right to develop as a people and the right to engage with the new economy if they wished to do so. Their right to development included assistance from the Crown where they faced development barriers.[7]

First Cause of Action: Raupatu

Breach

14. The Claimants' position is that section 2 of the New Zealand Settlements Act 1863 provided for the raupatu of land in the Bay of Plenty. The effects of raupatu on Māori were detrimental, as they were displaced of their tūrangawaewae. Land awarded back to Māori in the inquiry district was unsuitable for sustainable and productive cultivation and to support future generations.

Particulars

15. On 5 September 1865, Governor Grey issued the Peace Proclamation in the Bay of Plenty restoring land held under Crown grant in return for the murderers of Völkner. News of the peace proclamation was yet to reach the Bay of Plenty and with no awareness of the proclamation, Whakatōhea were not able to surrender the murderers of Völkner. On 8 September 1865, soldiers landed in the Whakatōhea rohe to conquer lands as a result of the tribes not giving up Völkner's murderers. The ensuing confiscation took all of the Whakatōhea lands suitable for cultivation. The area including Hiwarau was at the centre of the confiscated district.

16. Following raupatu in the Bay of Plenty District, as the Eastern Bay of Plenty

[7] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga* at 82.

was called, the application of the Confiscated Lands Act 1867 provided for the awarding of land to loyalists and rebels divided into three. The first category provided compensation of land to those who were found to have been poorly compensated, the second category provided for "loyalists" who suppressed rebellion and the last category provided for rebels who surrendered to the Queen's authority. Further to this, the compensation court was established in 1865 to award land for compensation instead of money, although it did not operate in the Whakatōhea rohe, where a series of civil commissioners were appointed to make all such compensation decisions. Confiscation extinguished all customary tenure legally and any land returned to Māori was done so under Crown title, a fundamental legal change from having been customary land under aboriginal or native title held by Whakatōhea.

17. Hiwarau was awarded back to 42 members of Ūpokorehe by Commissioner John Alexander Wilson under the second and third categories for Māori under the Confiscated Lands Act. The quantity of Hiwarau awarded amounted to 1310 acres and Hokianga island granted under the 4th and 6th clauses of the Confiscation Lands Act of 1867. The combined award was featured as a Native reserve in Commissioner Heaphy's 1871 revision, amounting to 19 acres per head.[8] However, revisions in 1871 led to the addition of 14 additional members of Ūpokorehe who were overlooked in the previous arrangement and in 1874 the Hiwarau Reserve was gazetted with 56 beneficiaries named.[9]

18. Aside from the awarding of land by Commissioner Wilson towards rebels in Hiwarau, land was also allocated for military settlement. In comparison to the land allocated to Hiwarau and other Whakatōhea hapū, 23,461 acres was set aside for military settlements within Ōpōtiki, Ōhiwa and Whakatāne.[10]

[8] J Luiten, Nineteenth-century Land Alienation and Administration, within the North Eastern Bay of Plenty (Wai 1750 A12), at 174.
[9] Luiten Wai 1750 #A12 at 184.
[10] J McLellan, Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874 (Wai 1750 A3), at 93.

19. The awarding of Hiwarau would also establish issues of boundaries between Ngāti Awa and Whakatōhea. Maraetotara Stream marked the boundary between Ngāti Awa and Whakatōhea from at least the 1830s. The subsequent Battle of Te Maraetotara, between Ngāti Awa and Whakatōhea, led to the boundary dispute known as whenua tautohetohe between the two iwi.

Second Cause of Action: Creation of Hiwarau as a Reserve

Breach

20. The Claimants' position is that the raupatu in the Bay of Plenty District confiscated land that was tūrangawaewae to Whakatōhea and led to the creation of the Hiwarau Reserve. The allocation of the reserve was inadequate in generating income for the 56 Te Ūpokorehe members it was granted to.

Particulars

21. In 1872, Civil Commissioner John Alexander Wilson settled Ōhiwa Māori, who had "rebelled" and surrendered, on the Hiwarau block and Hokianga Island under the Confiscated Lands Act 1867. The Act allowed the creation of native reserves to settle "loyalists" and "rebels" of the Crown. The reserves created on Hiwarau and Hokianga Island resulted in the Hiwarau and Opape native reserves.[11]

22. Further to the Crown grant of Hiwarau and Hokianga, various partitions and successions of the Hiwarau Block greatly fragmented the original block leading to the amalgamation of the titles to 22 blocks. Continual interference from the Crown and through the Crown's agents and delegates led to the creation of Hiwarau C in 1969, under section 436 of the Māori Affairs Act 1953.

[11] Luiten Wai 1750 #A12 at 181-183.

23. Based on the same principles as the Opape Reserve, the Hiwarau block was created as a reserve where "the concentration of the local population was placed on a minimum of marginal land".[12] This was thought by Commissioner Wilson to sustain the 56 beneficiaries however, only a small portion of the Hiwarau Block was arable. The rest of the block was deemed as unsuitable for farming due to its topography. With these issues in mind, there was no way for the beneficiaries to generate economic income. Hiwarau was merely a place to perch and not to prosper. [13] Instead of mitigating the issue, the Crown added additional beneficiaries.

Third Cause of Action: Management of the Hiwarau Reserve

Breach

24. The Claimants' position is that the mismanagement of the Hiwarau C Block by successive Māori Trustees have contributed to the deterioration of the block during its 98 years of administration. These issues include the running down of the block, arrears in rates and rent from various lessees and the failure to recover rental monies that was owed. The Māori Trustee was a statutory body created by the Crown to administer Māori freehold land and carried the Crown's duty to oversee the Māori Trustee to ensure it was carrying out its duties and responsibilities.

Particulars

25. Under Māori Trustee management, rates were owed to the Ōpotiki District Council in 1994 by lessees of two portions of the Hiwarau Block. The lessees fell into rental arrears and the Māori Trustee failed to remedy the breaches made known to it since 1970, leading to on-going complications years later.[14]

[12] Luiten Wai 1750 #A12 at 183.
[13] Luiten Wai 1750 #A12 at 188.
[14] Ewan Johnston "Wai 203 and 339 Research Report" (Wai 894 #A14, June 2002) at 92.

26. Despite many attempts to remedy the situation with the lessees, the Māori Trustee failed to enforce the terms of the lease and remedy outstanding rent arrears. The Māori Trustee had hoped that the situation would resolve itself, deciding to follow an inactive approach, hoping that the lessees would eventually quit the leases themselves.[15] The situation was approached by the Māori Trustee in a passive way, as evicting the tenant would leave the land unoccupied and the owners would be worse off than before. The result was 14 years of underwhelming and failed management by the Māori Trustee to resolve the situation.

27. Under the Māori Trustee's management, the land blocks deteriorated significantly. Inspection of the Hiwarau blocks in 1985 found a lack of maintenance over the land with no improvement since its last inspection in 1980. Lessees of A11, B4A, B4B, and B2 at the time had breached the terms of maintenance, contributing further to the deterioration of the block and the land.[16] Despite the Māori Trustee being made aware of the deterioration, no further action was taken to improve the state of the block, which led to dissatisfaction with and uncertainty in the administration of the Trustee.

28. Poor administration by the Māori Trustee was apparent throughout its term of administration of Hiwarau C, as other leases accumulated rental arrears.[17] After reassessment of the rental blocks and increased rent per annum, the Māori Trustee promised a meeting to discuss rental concessions, which never occurred. There was little information in the files of the Māori Trustee showing any dividends being paid to the owners.

29. Further to the poor administration of the Māori Trustee, the interests purchased under the conversion policy led to the loss of many shares of Hiwarau Block owners. The conversion policy allowed the Māori Trustee to purchase small interests that were to be used exclusively for Māori or Māori

[15] Johnston Wai 894 #A14 at 103.
[16] Johnston Wai 894 #A14 at 39.
[17] Claimant evidence.

purposes.[18] The Hiwarau block included titles that were affected by conversion and the Māori Trustee held 154.08 of the 20,400 shares in the block.[19]

30. The Māori Trustee's management over the Hiwarau Block proved that its responsibilities were never exercised in the best interest of Māori whose land were vested in it.[20] Many issues were introduced under its management and did not protect the interests of Māori owners. Issues which arose under Māori Trustee management still being dealt with today as current members of the Trust continue to attend court hearings to resolve these issues.

Fourth Cause of action: Land Administration by the Native / Māori Land Court and Ownership Issues

Breach

31. The Claimants say that the awarding of Hiwarau to what was supposedly 56 members of Te Ūpokorehe created issues in relative interests with the addition of others. The Crown failed to ensure the block was only granted to members of Te Ūpokorehe. Hiwarau and Hokianga was to be allocated together as a single award for the use of 'loyal natives and returned rebels of the Upokorehe hapu'.[21] Instead, the lands were granted to a mixture of groups, including Te Ūpokorehe and Māori outside of Te Ūpokorehe. Furthermore, the system of tenure implemented by the Native /Māori Land Court partitioned the block, and the Pākehā succession laws would culminate in further fragmentation of land holdings before the blocks were eventually amalgamated to form Hiwarau C in 1969.

[18] Bruce Stirling, Twentieth Century Land Legislation and its impacts North Eastern Bay of Plenty Inquiry (Wai 1750, #A32, November2023) at 356.
[19] Stirling Wai 1750 #A32 at 369.
[20] Johnston Wai 894 #A14 at 80.
[21] Luiten Wai 1750 #A12 at 174.

Particulars

32. Hiwarau was granted to 56 members who were supposedly of Te Ūpokorehe hapū. The granting of Hiwarau to Te Ūpokorehe was on the basis that their mana at Ohiwa rested on widely recognised ancestral take. [22] In 1898, Te Warana Mokomoko filed an application in the Māori Land Court regarding interests in the block, stating only 30 of the 56 listed were of 'true Te Ūpokorehe'. The other 26 were of Ngāti Karatehe, Ngāti Hemapo and Te Urewera.[23] Te Warana stated that those who were not of Te Ūpokorehe should receive a smaller share in the block as they had been included in the title without right.[24] However, Judge Johnson of the Native Land Court held that "Upokorehe" was simply a collective name for those who lived at Ōhiwa/Waiotahi and the Compensation Court and Crown Agent classed the 56 beneficiaries as Te Ūpokorehe to distinguish those who had lived at Ōhiwa and to which the land was given to for settlement purposes. [25] Following the application, the court awarded three shares to each male adult, two shares to each female adult and one share to each child.[26]

33. The Hiwarau block was further partitioned until it was greatly fragmented. In 1904, the Hiwarau Block was partitioned into Hiwarau A with 794 acres between 44 owners and Hiwarau B with 484 acres between 33 owners. Further to this, both blocks were subsequently partitioned over 60 years into 30 individual blocks with the expansion of shareholders.[27]

34. In 1969, the partitioned Hiwarau blocks were amalgamated into Hiwarau C. Fifteen blocks were excluded from the amalgamation, this included 12 blocks from Hiwarau A and 3 from Hiwarau B. These blocks were excluded from amalgamation due to confusion over title or objection from existing lessees. Due to the exclusion of the fifteen blocks, the Hiwarau Block area decreased in size from 1241 acres 3 roods and 33 perches to 937 acres 3

[22] Luiten Wai 1750 #A12 at 176.
[23] Luiten Wai 1750 #A12 at 193.
[24] Ewan Johnston "Wai 203 and Wai 339 Research Report" (Wai 894 #A14, June 2002) at 69.
[25] Johnston Wai 894 #A14 at 69.
[26] Cathy Marr "Background to the Tuwharetoa ki Kawerau Raupatu Claim" (Wai 62 #A2, June 1991) at 47.
[27] Johnston Wai 894 #A14 at 77.

roods and 3 perches.[28] The amalgamation was seen as a way of conveniently dealing with the block held in common ownership under one title.

35. The minutes from the amalgamation hearings held in August of 1969 show little evidence of consultation, a lack of due process by the Māori Land Court and participation by Hiwarau owners. The amalgamation of Hiwarau C was vested in the administration and management of the Māori Trustee.[29]

36. Applications and petitions against the amalgamation were received however, were dismissed by the Māori Land Court. Despite being aware of the mix-up in hapū claimed under the grant to Te Ūpokorehe, the Crown still included those who were not of Te Ūpokorehe in the list.

Fifth Cause of Action: Crown Actions Regarding Public Works

Breach

37. The Public Works Act 1908 permitted Crown acquisition of Māori freehold land for public works. The Claimants' position is that acquisition of land from the Hiwarau block without proper notification to land owners has hindered and reduced the ability of the owners from using the block to its full extent to generate economic income. The acquisition of land from the Hiwarau Block has contributed to the Block's fragmentation and reduction in size. Compensation given in return for acquisition was either insufficient for the amount of land taken or there was no compensation given at all.

Particulars

38. Scenic reserves were seen as an economic resource and revenue-earner. The introduction of the Scenery Preservation Act 1903 gave legislative recognition to concepts of conservation. Under the Act, the Crown could acquire land under the Public Works Amendment Act 1903 on

[28] Johnston Wai 894 #A14 at 89.
[29] Johnston Wai 894 #A14 at 91.

recommendation of the Scenery Preservation Commission.[30]

39. In 1912, Crown acquisition of part of the Waiotahi Parish and Hiwarau Block A included 48 Acres and 1 rood from part section 189. This land was acquired under the provision of the Scenery Preservation Amendment Act 1910 and the Hiwarau owners were notified via the Taneatua Post Office. There was a question of relevance with the Taneatua post office notification to the Hiwarau Block owners.[31] This was known as the Matekerepu Reserve and despite objections received, the scenic reserve was taken under the Public Works Act 1903 for scenic purposes in 1912. The two owners of the land who objected to the land being taken did so on behalf of all the owners affected and were offered compensation.[32]

40. On the 29 May 1912, Wi Kotu wrote to the Minister of Public Works disagreeing with the taking of Hiwarau A. After acknowledgment of receipt of the objection, Wi Kotu and those objecting to the proposed taking were directed to the relevant court to ensure that the appropriate compensation was awarded. Hiwarau A was taken under the Public Works Act, despite objections made on the grounds that the owners had insufficient lands for sustaining themselves.

41. In 1938, a further 9 acres 3 roods and 12 perches of Hiwarau A was taken for 'scenic reservation' under the Public Works Act 1928. The argument presented was that this would further protect the pā sites on the land and reduce the amount of fencing required to protect the reserve.[33] The existence of pā sites became known to the Historic Places Trust and the purpose of the reserve was changed from scenic to historic reserve in 1982.

42. The Department of Conservation produced a conservation plan in 1993 which would protect the historic reserve and prevent further loss to the pā

[30] David Alexander "Environmental Issues Relevant to the Historical Relationship between Whakatohea Hapū and the Crown" (Office of Treaty Settlements in association with Whakatohea Pre-Settlement Claims Trust, October 2017) at 18.
[31] Heather Bassett and Richard Kay "Public Works Issues c.1870s-2010" (Wai 1750, #A29, June 2023) at 315.
[32] Alexander "Environmental Issues" at 20.
[33] Johnston Wai 894 #A14 at 124.

sites. However, this plan has proven completely ineffective as a power pylon now sits on the gun fighting pā. This is known as Whakarae pā, located on the ridge of Hiwarau C. My aunty Hinehou (Josie Mortenson) opposed the positioning of the power pylon as it destroyed part of the pā site.[34] So the Crown's own "protective" systems have ailed the Claimants, even when the intent was present, and the Claimants' taonga have been harmed.

Sixth Cause of Action: Environmental Issues

Breach

43. For many generations, the Ōhiwa Harbour was a living taonga and a food basket known as Te Kete o Tairongo to the many hapū of Whakatōhea, particularly those associated with the Hiwarau Block. An abundance of kai moana is reflected throughout the history and songs of iwi and hapū.[35] Prior to raupatu inflicted by the Crown, Māori controlled and cared for the Ōhiwa Harbour as kaitiaki. The Claimants' position is that Crown management of the harbour has failed to recognise customary rights and practices of tangata whenua. This has contributed to the deterioration of the Ōhiwa Harbour and depletion of kai moana that was once abundant. The degradation of the environment threatens the preservation of Māori cultural practices which is passed down as intergenerational knowledge.[36]

Particulars

44. Following raupatu, dense Pākehā settlements in Ōhiwa have led to increased land modifications leaving detrimental effects on the harbour. Intense land developments have created 5cm layer deposits of sedimentation and

[34] Claimant evidence.
[35] CIV-2017-485-375 Hiwarau C, Turangapikitoi, Waiotahe and Ōhiwa of Whakatōhea and the Common Marine and Coastal Area Act 2011 1840-2019" (Wai 1750 #A21, October 2021) at 28.
[36]Kura Paul-Burke, Rokahurihia Ngarimu-Cameron, Waka Paul, Joe Burke, Kerry Cameron, Tuwhakairiora O'Brien, Charlie Bluett and Te Ūpokorehe Resource Management Team "Ngā tohu o te taiao: Observing signs of the natural world to identify seastar over-abundance as a detriment to shellfish survival in Ōhiwa Harbour, Aotearoa/New Zealand" (2022) 37 Sociological Association of Aotearoa New Zealand 186 at 188.

siltation in the harbour.[37] This has adverse effects on the marine environment including the suffocation of kai moana and poor water quality for kai moana to thrive in. Sedimentation, siltation and effluent discharge into the harbour has affected the ability of the Claimants to practice kaitiakitanga and traditional customary Māori practices involving the coastal environment and sustaining a customary way of life. Increased sediment deposits have also encouraged the over-growth of mangroves in the harbour hindering customary practices that are associated with collecting kai moana.[38]

45. Effluent discharge from surrounding farms have also contributed to the deterioration of the Ōhiwa Harbour. The Nukuhou Stream which feeds into the Ōhiwa Harbour has been polluted as a result of effluent discharge contributing to poor water quality in the Harbour.

Harbour management

46. Kaitiakitanga is a crucial part of Māori environmental management that encompasses a spiritual connection with the environment and caring for the environment for future generations. The practising of kaitiakitanga by Whakatōhea has been hindered by the establishment of local authorities by the Crown. Local government authorities introduced modifications to harbour management which brought changes for tangata whenua. Local government authorities imposed systems which include making applications for permits to harvest kai moana harvesting for birthdays and tangi. What once was part of customary practice with no limits has now changed to a system where mana whenua ask permission to gather their own resources in their own rohe.

[37] Bruce M. Richmond, Campbell S. Nelson and Terry R. Healy "Sedimentology and evolution of Ohiwa Harbour, a barrier-impounded estuarine lagoon in Bay of Plenty" (1984) 18 New Zealand Journal of Marine and Freshwater Research, 461, at 461

[38] Tim Senior, Mike Houghton, Malcolm Donald and John Douglas *Ohiwa Harbour Sediment and Mangrove Management Plan* (Environment Bay of Plenty Regional Council, Operations Publication 2009/05, October 2009) at 35-36.

47. Daily take limits for kai moana were introduced during the 1970s and a new procedure was set up where the Māori welfare officer in Ōpōtiki would refer applications to the Senior Inspector of Fisheries in Tauranga for a decision. Within the first year of introducing permits, twelve applications had been received with eight granted and four applications refused.[39] Tangata whenua of Ōhiwa were now restricted as to what they were able to take.

48. With a plethora of shellfish in the Ōhiwa Harbour, Crown officials saw the potential for commercialising shellfish harvesting in the Harbour and fishery officials were encouraged to develop commercial fishing. Fishery officials studied management techniques of shellfish stocks and shellfish populations in the Harbour to progress commercial fishing. Despite this, commercial fishing depleted shellfish beds and proved to be unsustainable in its method.

49. Crown management of the Ōhiwa harbour has centred on sole governance. Local government bodies who act with powers delegated by the Crown, such as the Ōpōtiki County Council, made decisions on behalf of mana whenua during its term of administration over the harbour, and had no consultation with them "on foreshore control orders or harbour limits made by the Advisory Committee."[40] The Ōhiwa Harbour Advisory committee was established with the equal membership by the Ōpōtiki District Council and the Whakatāne District Council to advise both councils on matters affecting the Harbour. The failure to consult with mana whenua highlights the failure of the Crown to engage with and acknowledge the mana whenua of Ōhiwa.

50. With no inclusion or consultation with mana whenua, the Ōhiwa harbour deteriorated over time under the sole governance of Crown authorities. By the time Māori representation was included in advisory groups, the issues the advisory groups faced included the exploitation of fisheries and deterioration of shellfish stocks. Māori representation in the Harbour's management only began after the Harbour's condition had degraded significantly.

[39] Alexander "Environmental Issues" at 107.
[40] Alexander "Environmental Issues" at 96.

Seventh Cause of Action: Hokianga Island

Breach

51. The Claimants' position is that the awarding of Hokianga Island to 48 members of the Te Ūpokorehe created issues in relative interests. Separate to the Hiwarau Block list, three men, four women and one minor was excluded from the list. The Mokomoko whānau petitioned the relative interests in the Native Land Court however, this resulted in tension within the hapū as nothing improved.

Particulars

52. Hokianga Island was allocated as a part of the package awarded to Te Ūpokorehe by Civil Commissioner Wilson. The awarding of Hokianga Island was on the basis that a kāinga had been established on the island with members from Te Ūpokorehe. From this, 48 members were included on the list of awardees for Hokianga Island with 30 acres to divide between them. This was insufficient in sustaining the 48 beneficiaries it was granted to.

53. As mentioned in paragraph 32, Te Warana Mokomoko filed an application in 1898 partitioning relative interests on the basis that the beneficiaries were not of 'true Te Ūpokorehe'. Judge Johnson of the Native Land Court held that "Upokorehe" was simply a collective name for those who lived at Ōhiwa/Waiotahi and the Compensation Court and Crown Agent in the 1860s had classed the beneficiaries as Ūpokorehe to distinguish those who had lived at Ōhiwa and to whom the land was given to for settlement purposes.

Relief Sought:

54. The Claimants seek a finding from the Tribunal that their claim is well founded.

55. The Claimants seek compensation for the loss suffered by the land owners through the deprivation of use and occupation of ancestral land.

56. The Claimants also seek:

a. a partition of Hiwarau C which would allow descendants of the original owners and their whānau within Te Ūpokorehe to be grouped as owners and manage their land, create homes and support themselves independent of other whānau, hapū, or iwi groups currently registered as Hiwarau C owners;

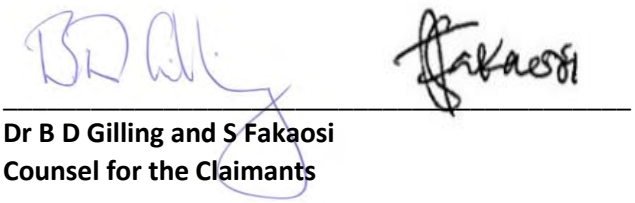
b. that the Crown, in recognising their role in the current state of Hiwarau C block, pay the costs of partitioning Hiwarau C and returning it to the appropriate owners;

c. the Crown provide resources and support to the Claimants and other owners of Hiwarau C, including education and training programmes on land management, financial management, and legal rights of landowners; and

d. incorporation by Crown agencies, and delegates such as local authorities of cultural considerations into land management practices, facilitating the protection of significant sites, and ensuring Māori participation in decision-making process related to land use and conservation.

Leave to Amend Claim:

57. The Claimants reserve the right to further amend this amended statement of claim, in the light of research, evidence, submissions or other material, which may come to light during the preparation and presentation of this Claim.



Dr B D Gilling and S Fakaosi
Counsel for the Claimants

THIS STATEMENT OF CLAIM is filed by **Dr B D Gilling** of Mahony Horner Lawyers, Counsel for the Claimant. The address for service for the Claimant is Level 9, 3-11 Hunter Street, Wellington, 6011.

Document for service on the Claimant be left at that address or may be:

(i) Posted to the Solicitor at PO BOX 24515, Wellington; or

(ii) Transmitted to the solicitor by email at: bryan.gilling@mhlaw.co.nz.