BEFORE THE WAITANGI TRIBUNAL

WAI 1750
WAI 1775

IN THE MATTER OF	the Treaty of Waitangi Act 1975
AND **IN THEMATTER OF**	claims relating to the North-Eastern Bay of Plenty Inquiry District **(WAI 1750)**
AND **IN THE MATTER OF**	a claim by the late Mr John Hata and Russell Hollis, Antoinette Hata and Te Ringahuia Hata for and on behalf of Ngāti Patumoana hapū **(WAI 1775)**

AMENDED STATEMENT OF CLAIM
Dated this 5th day of February 2024

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. This Amended Statement of claim is filed by the late Mr John Hata and Russell Hollis, Antoinette Hata and Te Ringahuia Hata for and on behalf of Ngāti Patumoana hapū ("the Claimants").

THE CLAIM OVERVIEW

2. The claim represents the effects of the New Zealand wars on Ngāti Patu and Whakatohea iwi, and the impoverishment of Ngāti Patu in the late nineteenth century, the effects of the Native Land Court in displacing Ngāti Patu from their traditional lands at Paerātā, Onekawa and Ahirau after the Battle of Te Tarata in 1865 and the arrest of Mokomoko. and placing them on the Ōpape Reserve, Crown purchasing activities, the effects of the consolidation and development schemes, Crown forestry policies relating to Waiaua river and its tributaries, Crown policies of environmental management, and other acts and omissions by the Crown that were in breach of the principles of the Treaty of Waitangi.

3. The arrest and execution of rangatira Mokomoko, who was the rangatira of Ngāti Patu at the time war and raupatu occured, will be covered by the Wai 203, Te Whānau a Mokomoko claim. The impacts of his arrest without a trial, and execution in 1866, give context for Ngāti Patu hapū who suffered both physically, socially, emotionally, and mentally as a result not only by the Crown, but by other hapū in Te Whakatōhea. The stigma still continues today.

4. Ngāti Patu further claim that all of the Acts, regulations, orders, policies, practices and actions taken, omitted or adopted by or on behalf of the Crown referred to are and remain inconsistent with the terms and principles of te Tiriti o Waitangi.

5. The Claim relates to the areas of land, rivers, fisheries, taonga species, takutai moana and other resources in the traditional rohe of Ngāti Patu and to the Crown confiscation of, and dealings with, the ancestral land and resources of

Ngāti Patu and subsequent acts or omissions by the Crown that were, and continue to remain in breach of the principles of te Tiriti o Waitangi.

6. The Wai 1775 claim was filed in 2008 by the late John Hata who spent most of the latter part of his life dedicated to the Ngāti Patu raupatu claim since the first attempt to settle failed with the Crown in 1996.

7. The Wai 1775 claim is a historical treaty claim within the definition of Section 2 of the Treaty of Waitangi Act 1975.

8. The Claimants confirm that their claim falls within one or more of the matters referred to in Section 6(1) of the Treaty of Waitangi Act 1975 namely:

   a) they are Māori; and

   b) they have been and continue to be or are likely to be prejudicially affected by the various Acts and Crown policies, practices, acts and omissions adopted by or on behalf of the Crown or its agent.

9. The claim predominantly focuses on the following:

   a) The Claimants role in the Te Whakatōhea defence against the aggression of the Crown (war and raupatu);

   b) The impact of the raupatu on the interests of the Claimants;

   c) The subsequent impact of the post-raupatu Crown Treaty breaches on the interests of the Claimants;

   d) The resulting marginalisation of the Claimants as a consequence of the foregoing breaches.

THE CLAIMANTS

10. The Claimants are descendants of the Whakatōhea ancestress, Muriwai. They are descendants of the Mātaatua canoe, and Te Aratauta canoe. Muriwai was the first-born high chief on the Mātaatua canoe. Muriwai's father was Irakewa, her mother was Wekanui. Muriwai. After Muriwai came her younger brothers Toroa, then Puhimoana.

11. The descendants whakapapa to the hapū of Ngāti Patumoana which is a hapū of Te Whakatōhea and their traditional rohe is located in the North Eastern Bay of Plenty area.

12. The Claimants are descendants of Ruaumoko, an eponymous rangatira of Ngāti Patu. Ruaumoko is the younger brother of Tahu, the sons of Hau o Te Rangi. Ruamoko and Tahu (whom Ngāti Ngahere derive from) descend from Tārawa. Therefore, Ngāti Patumoana is the youngest hapū of Whakatōhea because its genesis begins in the time of Ruamoko.

13. Tārawa is the earliest recognised and significant Whakatōhea ancestor often described as both a god and a taniwha.

14. The descendants of Tārawa were collectively known as Ngai Tū, which comprised of Ngāti Patu, Ngai Tama and Ngāti Ngahere. They coexisted together with the hapū of Te Whakatāne and intermarriages also solidified their 9 relationships. Their ancestral homelands were predominately at Paerata inland all the way out to Ohiwa. There are several pā tawhito and kāinga and urupā.

15. As the name of the hapū denotes, Ngāti Patumoana derives its name from an incident that occurred at the mouth of the Waiotahe river during the time of the Ngāpuhi pakanga. Hineiahua, was captured by Ngāpuhi and killed at sea.

16. The Claimants respectfully seek that leave be reserved to file further amendments to the statement of claim upon the completion of all research by specifying the particulars of the claim and the recommendations they seek from the Tribunal in order to remedy the prejudice arising from the breaches of te Tiriti o Waitangi.

THE CLAIM AREA

17. The boundary that Ruamoko laid down is recorded in the Ōpotiki minute Book No 5 on 25th March 1889.[1]

[1] Ōpotiki Minute Book No 5, p 238.

It "…went from Te Wana up the Kahunui stream into Waioweka river and follows Waioweka river north to the coastline and the confiscated line… running west along the beach to Ohope then inland to Oruakani.

TE TIRITI O WAITANGI

The Treaty of Waitangi & Te Tiriti o Waitangi 1840

Te Whakatōhea

18. On the 27 May 1840, seven Whakatōhea chiefs placed their marks on the Treaty. The signatories were Tauātoro, Takahi, Āporotanga, Rangimātānuku, Rangihaerepō, Ake and Whākia. The latter signed the document a day after the others. Rangimātānuku, Rangihaerepō, and Tauātoro were the three Whakatōhea chiefs who the sign of the cross beside their names.

19. The Crown had, and continues to have, duties to recognise and actively protect Māori rights and interests under the Te Tiriti.

CAUSE OF ACTION: RANGATIRATANGA O NGĀTI PATU

Breaches

20. The Crown in breach of article two of the Treaty of Waitangi and the principles of the Treaty generally, unilaterally asserted and imposed their own systems of law and governance structures, purportedly for the benefit of Whakatōhea to manage, receive and administer Ngāti Patu lands, awa, waahi tapu, taonga, whānau and hapū.

21. Article 1 of Te Tiriti o Waitangi granted kawanatanga to the Crown as a right to govern settlers under British Law.

22. Article 2 of Te Tiriti o Waitangi guaranteed that Māori would retain their sovereignty or mana as tino rangatiratanga.

Particulars

23. Ngāti Patu have always held and continue to hold mana (absolute sovereignty, authority and control) over their rohe, whenua, awa, waahi tapu, taonga, whānau and hapū.

24. Ngāti Patu have always held this mana collectively as whānau and hapū.

25. This mana was exercised by the people through rangatira and tohunga who were recognised by the whānau and hapū because of their expertise or leadership. The rangatira or tohunga received this mana as the authority to fulfill that role on behalf of the people.

26. While the mana was exercised by the rangatira or tohunga, it was held by the people. The rangatira or tohunga had to exercise this mana according to the purpose for which it was bestowed, and in the best interests of the whānau and hapū in order to maintain the support of the people. If the rangatira or tohunga did not maintain the support of the people, his or her ability to exercise this mana was lost.

27. Ngāti Patu understood that under Te Tiriti:

    a) Ngāti Patu would retain their mana over their rohe, whenua, awa, waahi tapu, taonga, whānau and hapū;

    b) the Crown would govern settlers under British law; and

    c) Māori and the Crown would work together as partners for the prosperity of all.

CAUSE OF ACTION – WAGING WAR

Breaches

28. In breach of the principles of active protection, good faith, and in breach of the Crown's fiduciary duty to the Claimants, the Crown acted in a manner that increased the tension between the Claimants and the Crown in the Te Whakatōhea district which precipitated war which resulted in the following:

a) loss of life: men, women and children;

b) unlawful invasion of lands and forcibly destroying and seizing the Claimants property;

c) undermining the ability of the Claimants to exercise tino rangatiratanga with an aim to extinguishing their mana;

d) the attack on the leadership of the Claimants and crushing their efforts toward political cohesion.

Particulars

Early engagement with Cathlolic Church

29. A significant marriage alliance between Te Whakatōhea and Ngāpuhi lead to the introduction of the Catholic church to Ōpotiki in 1840.

30. On 22 March 1840, Pompallier sailed from Tauranga to Ōpōtiki Pompallier visited Ōpōtiki in 1840, he was welcomed at Ōhiwa by Moka Kainga-Mataa and walked five hours from Ōhiwa to the large church that Moka Kainga-Mataa built.[2]

31. Pompallier was welcolmed by the Rangatira of Ngāti Rua and Ngāi Tamahaua, Titoko, Rangimātānuku and Rangihāerepo (who also signed Te Tiriti).

32. On 22 March 1840, the first Catholic mass was held in Ōpōtiki. Two months later on 27 May 1840, seven Whakatōhea chiefs signed Te Tiriti o Waitangi in Ōpōtiki.

33. Ngāti Rua embraced Catholicism at Moka Kainga-Mataa's suggestion, again illustrating the role prisoners of war played in bringing Christianity to Whakatōhea. Ngāti Patu also adopted Catholicism, and according to Walker, Ngāti Ira later converted from Anglicanism to Catholicism. Between 1840 and 1862, a series of Catholic missionaries maintained a presence in Whakatāne

[2] Ranginui Walker, *Ōpōtiki-Mai-Tawhiti, Capital of Whakatōhea,* (2007), at 51.

and Ōpōtiki. In 1862, Father Joseph Garavel assumed authority over the Ōpōtiki mission[3].

34. Reverend Wilson estimated there were 1,000 'professed Christians' in the Ōpōtiki District in October 1848. Among these, the differences between Anglicanism and Catholicism probably mattered more to the missionaries than to their converts. Both found adherents, and the demarcation between some of those adherents defined their responses to the killing of Reverend Völkner in 1865[4].

War in Whakatōhea

35. Before Völkner's death, Whakatōhea at Ōpōtiki had experienced a short but sharp period of dramatic occurrences including the involvement in war, the loss of a formerly vibrant trading economy, the impact of disease and the mass conversion to a new, demanding religion.[5]

36. On 2 March 1865, Volkner was executed.[6]

37. The cause of Völkner's death appears to have been instigated by Kereopa and undertaken by local Whakatōhea and visiting Ngāti Awa.[7] However, it would be incorrect to suggest the action was carried out or supported by all Whakatōhea, as is exemplified by the multiple attempts by Te Ranapia to reason with Kereopa.[8]

38. There was no real Government response to Völkner's death in Ōpōtiki until September 1865, however, in early September 1865, a 'Proclamation of Peace' declared the end of the Waikato and Taranaki Wars, but was almost immediately followed by a declaration of martial law in the districts of Ōpōtiki and Whakatāne, which led to colonial forces occupying Ōpōtiki.[9]

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[3] Wai 1750, #A3, at p. 20.
[4] Wai 1750, #A3, at p. 20.
[5] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 503.
[6] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 435.
[7] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 445.
[8] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 646.
[9] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 648.

39. On 2 September 1865, Governor Grey declared an end to the war which had ‘commenced in Oakura’,which is now referred to as the Second Taranaki and Waikato Wars.[10]

40. Under the proclamation, no Māori who had previously taken up arms against the authority of the Crown would be prosecuted and no more lands would be taken in relation to their supposed prior ‘rebellion’. However, this amnesty excluded those who were ‘concerned in’ twelve particular murders, the named victims of which included Reverend Völkner.[11]

41. Specifically, an expedition would be sent to the Bay of Plenty to arrest those believed to have been involved in the killings of Völkner.[12]

42. If they are given up to justice, the Governor will be satisfied; if not, the Governor will seize a part of the lands of the Tribes 5who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.[13]

43. The pursuit of the killers of Völkner was assisted by the proclamation of martial law in the districts of Ōpōtiki and Whakatāne in September 1865.[14]

44. The killing of Wakana/Volkner was a civil offence committed by Kereopa Te Rau. But because of the Hauhau insurgency, it was treated as an act of war and Whakatōhea were held to be culpable for the murder. By the time the Government decided to move against Whakatōhea, Kereopa had left Ōpōtiki with his Hauhau followers, including a number of Whakatōhea converts. They took Volkner’s head with them and moved inland to the forested mountains of the Urewera.[15]

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[10] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 325.
[11] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 1097.
[12] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 1097.
[13] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 38.
[14] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 23.
[15] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 53.

45. Legislation was passed to protect those serving the Crown to suppress the Māori rebellion in the mid-to-late 1860s from being pursued for damages caused by their actions.[16]

46. The Suppression of Rebellion Act 1863 was passed in early December 1863 in an effort to extend existing legislation thought to be 'wholly inadequate' to stop the ongoing 'subversion' by some Māori of the authority of the Crown and government. The Act suspended the right to trial before imprisonment and established that military courts would be used to trial all who were charged with rebellion.[17]

47. The Indemnity Act was first passed in 1865 and was subsequently amended in 1867and 1868. This meant that Māori were unable to recoup their considerable loss of produce, stock, and property which were commandeered or destroyed by occupying forces and settlers for their benefit or vengeance.[18]

48. The Government sent an expeditionary force of 516 officers and men to capture Kereopa and punish Whakatōhea.[19] On October 5th, 1865, McDonnell attacked Te Tarata Pā. [20] Whakatōhea lost thirty-five dead and forty wounded. The dead at Te Tarata were thrown into the trenches of their own pā and buried.[21]

49. Five men from Whakatōhea who had surrendered or been captured by the East Coast expeditionary force were charged with the murder of Volkner. The most important defendant was the Ngāti Patu chief, Mokomoko. His co-defendants were Heremita Kahūpaea, Hakaraia Te Rāhui, Paora Tai and Penetito.[22]

50. Mokomoko maintained his innocence; however on the 17th of May 1866, Mokomoko, Heremita, Hakaraia were hanged according to the provisions of the Execution of Criminals Act 1858.[23]

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[16] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 72.
[17] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 72.
[18]Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 53.
[19] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 705.
[20] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 739.
[21] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 756.
[22] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 820.
[23] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 834.

CAUSE OF ACTION - RAUPATU

Breaches

51. In breach of Articles 1, 2 and 3 of Te Tiriti and its principles, the Crown waged war on Whakatōhea, including the Claimants:

    a) invoked the New Zealand Settlements Act 1863 effectively confiscating the ancestral lands of the Claimants;

    b) failed to ensure that sufficient lands were returned to the Claimants making economic, social, political development for the Claimants extremely difficult to achieve;

    c) imposed British concepts of tenure on the lands reserved in breach of the principles of the Treaty of Waitangi;

    d) destroyed the customary ownership of the lands reserved by imposing the individualisation of the titles; and

    e) failed to protect the Claimants from the large-scale alienations that occurred subsequent to the raupatu.

52. The Crown established the Compensation Court that failed to properly inquire into Ngāti Patumoana customary interests, nor recognize and provide for Ngāti Patumoana customary interests, in hapū lands, forests, fisheries, waters and other taonga.

53. The Crown wrongfully, unjustly and unfairly purported to extinguish, or extinguished, the customary title of hapu lands within the confiscation district.

54. The Crown failed to return lands to those who were found not to be ‘rebels’ their lands in the customary form in which they were previously held, but rather returned such lands in individualised land ownership under the power of a Crown-based authority.

55. The Crown failed to return waahi tapu and sacred sites.

Particulars

Legislation that enabled confiscation of land

56. The New Zealand Settlements Act 1863 allowed for the confiscation of land from tribes deemed to be in rebellion against the Crown, raupatu took on the new meaning of confiscation. The confiscation of Whakatōhea lands for Volkner's execution by the Hauhau is a microcosm of that dynamic.[24]

57. Crown legislation provided that once "rebellion" was identified, land could be confiscated from that Māori group.[25] However, it is clear that the legislation concerning land confiscations was motived by facilitating land for settlement by Pākehā.

58. The legislation which authorised confiscation of lands did not sufficiently define what a "rebel" meant so as to allow broad Crown discretion.[26]

Confiscation in Whakatōhea

59. There was insufficient evidence of "rebellious" acts.[27] However, on 17 January 1866, the Bay of Plenty confiscation was declared.[28]

60. On 17 April 1866, all of Whakatōhea who had surrendered, who by now made up the bulk of the tribe, were moved en masse to Ōpape Reserve which was intended by the government to be the sole reservation for Whakatōhea.[29]

61. Ngāti Patu were forced off their papakainga ancestral lands at Paerāta as a result of Wilson's largest out-of-court settlement with Whakatōhea relocating them (along with all other hapū), on the Ōpape Reserve of 20,789 acres.[30] The

[24] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 71.
[25] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 71.
[26] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 76.
[27] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 19.
[28] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 75.
[29] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 87.
[30] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at 72.

reserve was allocated for 'Rebels only of the Whakatohea tribe who have surrendered'. These were traditionally Ngāti Rua lands.[31]

62. Te Whakatōhea including the Claimants were banished from their whenua in Ōpōtiki to the outward boundary of their own rohe. The Waiaua River boundary deliberately denied to Te Whakatōhea most of the 'excellent land' in the Waiaua Valley, which instead had earmarked for the Auckland Superintendent's 'future disposal'. Equally significant is the suggestion that Opape Native Reserve was envisaged as a reservation for the entire Māori population in the district: for those yet to surrender, for related kin from Ōhiwa, and even for hapū from the neighbouring iwi, Ngāti Awa.[32]

63. The land (20,789 acres) was made a reservation on 18 April 1866.

64. The Ōpape Reserve was a narrow strip of land running inland from the coast and located in the north-east portion of the Inquiry District at the eastern edge of Whakatōhea's tribal boundary.[33]

65. The Ōpape residents had to petition Sir George Grey for food and seed. Their only sea-faring canoe which was used to could obtain fish during the winter months to provide food for the community, was commandeered by the military for their own fishing.[34]

66. Six months after the Whakatōhea had been living at Ōpape, the reserve was proclaimed under sections 4 and 6 of the Confiscated Lands Act 1867. The Governor was able to either grant the land, or have it set apart by warrant for the benefit of those for whom it was intended. Land 'set apart' remained Crown land.[35]

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[31] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at 87.
[32] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at p 69.
[33] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 97.
[34] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at p 71.
[35] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at p 73.

67. The Ōpape Reserve appeared to fall into the 'set apart' category but even so, it was never formally proclaimed as such. A total of 131 men, 122 women and 136 children of Whakatōhea made up the 1867 beneficiaries of Ōpape Reserve.

68. For Whakatōhea, when the Crown was selecting lands for confiscation, no apparent distinction was made by officials between the land holdings of different whānau/hapū or their varying culpability in the killing of Völkner or any resistance to the arrest of Völkner's suspected killers.[36]

69. The confiscation of Whakatōhea lands was not 'fair' or 'just' and the amount taken 'excessive.[37]

70. Ngāti Patu were allocated Ōpape No. 5 where Waiaua marae is located and No. 9.

71. The impact of Crown resettlement undermined whakapapa, mana a hapū, that continues to be felt by the Claimants.

72. Ngāti Patu was forced to move to the Ōpape Native Reserve and were separated from their maunga, awa, wāhi tapu, and other traditional sites and deprived of links with their history and whakapapa.

73. When Whakatōhea hapū had to live within the Ōpape Native Reserve, the Crown contributed to tensions between hapū as they competed for limited resources.

Return of lands

74. The Confiscated Lands Act 1967 allowed the Governor to create reserves on confiscated land and issue confiscated land as compensation outside of or in addition to the Compensation Court process.[38]

[36] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 82.
[37] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 86.
[38] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 85.

75. The Court determined that claims for compensation in the Bay of Plenty district could be lodged during a six-month period that was to begin on 17 January 1866, the date of the first confiscation proclamation. However, when the boundaries were amended by a second Order in Council, the period for lodging claims was determined to be three months from 1 September 1866.[39]

76. After an amendment was made to the original 1863 Act, 'rebels' who surrendered by a certain date would also be eligible to have their cases heard by the Compensation Court, while those that did not would be excluded from the compensation process.[40]

77. To be eligible for land compensation, individuals of Whakatōhea had to agree that they had been rebels and pledge allegiance to the Crown, even if they had not personally been in rebellion, as many, including the Claimants, had not.[41]

78. The returned lands that were returned through the Compensation Court process established for the purpose of returning land to 'loyal' Māori and those defined as 'rebels' under the New Zealand Settlements Act 1863 but who submitted to the authority of the Crown.[42]

79. Many of the large blocks of land returned to Māori covered the mountainous sections of the confiscation area. Much of the land which was not returned to Māori had a history of fruitful farming and cropping. Whakatōhea relished the flat alluvial planes around Ōpōtiki prior to their confiscation in 1865. Those lands were fertile and well-suited to cultivation of crops. The lands fertility and suitability for a wide range of crops, orchards, and agriculture were the back bone of Whakatōhea's economic prosperity between the 1840s and 1865. Whakatōhea used wooded areas for gathering food, medicine, and timber.[43]

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[39] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 77.
[40] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 68.
[41] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 82.
[42] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at p 25.
[43] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 84.

80. Confiscation occurred at a time of significant disruption for the peoples of Te Whakatōhea, and more widely, the Bay of Plenty, which was only worsened by the confiscation itself. Like many other Māori, the Claimants had difficulties engaging with a European bureaucratic process dependent on access to literacy. The Compensation Court sessions were often held under short notice, in areas remote from the lands claimed and the residence of many of the applicants.[44]

81. The Compensation Court process pitted whānau against whānau, hapū against hapū, Māori against Māori and resulted in some providing evidence in opposition to the claims being brought before the Court. Judge Wilson organised such witnesses to dispute those claims he did not support. The resulting deprivation of hapū identity and the total disregard for whakapapa that this entailed is stated to be the source of ongoing distress and turmoil for the Claimants.[45]

Old land claims

82. Old Land Claims are an integral part of the story of the Bay of Plenty confiscation. The Crown's 'surplus' of 7,638 acres manufactured by 1862 as a result of the missionary claims sits as an uneasy background to the Crown's belligerence in helping itself to the best of the bay just four years later. They also reveal something of John Wilson Junior's troubled history with the hapū of Te Whakatōhea. One of the first surveys Special Commissioner Wilson oversaw was that of his father's claim of 1,916 acres along the eastern bank of the Waiōweka River. As Crown Agent, Wilson used the same purchase deeds in the Compensation Court to defeat the claims of tangata whenua to their homelands between the Waiōweka and Waiōtahe Rivers. Conversely, confiscation gave other claimants like the Catholic Bishop and Auckland Superintendent Frederick Whitaker a second bite at the apple, the opportunity to re-dress otherwise illegitimate 'old land claims' as 'compensation claims', in order to obtain Crown grants for their piece of confiscated land[46].

[44] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 110.
[45] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 116.
[46] Wai 1750, #A12, at p. 42.

83. The Crown's war and confiscation brought tribal autonomy in the Bay of Plenty to an abrupt end, meaning the full brunt of the Old Land Claims could now be implemented. In May 1866 there was speculation as to how the government might proceed, whether the missionaries' awards would be included in or excluded from the confiscation district. The result, it seems, was a mixture of both. Applications for compensation were lodged by Wilson and Stack just in case. That of Stack was prosecuted by his son, James Stack, of Kaiapoi. Wilson Senior had just left New Zealand for good, the application lodged by his son, Special Commissioner for the Settlement of the Bay of Plenty Confiscation District John Wilson Junior[47].

84. Confiscation not only enabled the Wilsons and the Stacks to finally obtain Crown grants for their claimed lands, but it also provided two other individuals – Bishop Pompallier and Frederick Whitaker – a second chance to argue their claims to have purchased land. Pompallier's message of 'heartfelt thanks' to Frederick Whitaker for his 'efficacious protection towards my mission land at Opotiki' – in December 1866 – suggests the Auckland Superintendent may have encouraged the bishop to apply for compensation. Both claims proceeded, despite the fact that they were lodged outside of the six-month window prescribed by statute[48].

85. Two compensation claims were made by the Reverend Hoyne on behalf of the Roman Catholic Bishop in July 1867: one for around 11 acres at Whakatāne, the other involving four acres 'purchased and possessed' at Ōpōtiki.135 The claims were based on deeds that had been transacted by the first resident Catholic priests in the district, although up to this point the Catholic Church had forborne to gain legal title on the strength of the transactions – with good reason. Indeed, a major plank of Wilson's 'defence' in court was that both transactions had occurred post-treaty (when private transactions were unlawful): that at Ōpōtiki dated 25 September 1841, the Whakatāne deed later still, in 1844. Furthermore, as the Crown Agent argued in court, the Ōpōtiki deed in particular was not a sale and purchase arrangement at all, but rather an

47 Wai 1750, #A12, at p. 56.
48 Wai 1750, #A12, at p. 60.

agreement to occupy the house and fenced grounds at Pakowhai prepared for the purpose. The deed itself read[49]:

> Kua tukua atu e matou te ware i hanga me i taiepatia e te hunga no Opotiki ki pakowhai hei ware nohoanga ake, ake, ake mo nga ariki e tonoa ai e te Epikopi Katorika Romana, hei kai wakaako mo matou, me hei kai wakarite i nga ritenga of te karakia te hahi Katorika Romana.
>
> We give the house that has been built and fenced by the people of Opotiki at Pakowhai, as accommodation hereafter for the priests which may be sent by the Roman Catholic Bishop as teachers for us, and as adjudicators on the tenets of the Roman Catholic faith.

86. Wilson's witness, Roman Catholic Witeria of Ngāti Ira, told the court that 'tobacco & print' had been exchanged for the use of the house and to have the locals fence it in, 'but the land was not sold, it was given for the priests to live on [which they did] from ten to twenty years.' Pressed by Judge Mair, he added, 'do not think they would ever have been compelled to give it up, unless thro' some fault of their own. In the result, Mair upheld the claim, awarding the Catholic Church an acre of land in the Ōpōtiki township, being Lots 15, 16, 17, and the northern half of Lots 24 & 25, presumably where their whare had stood[50].

87. The compensation awards to Frederick Whitaker and the Roman Catholic Church, based on unfounded Old Land Claims or, in the case of Bishop Pompallier, no Old Land Claim whatsoever, further demonstrates the extent of bias at work.[51]

CAUSE OF ACTION – LAND ALIENATION

Breaches

88. The Crown has failed to recognise the Claimants mana and ownership of the whenua as guaranteed in Article 2 of Te Tiriti o Waitangi.

89. The Crown, contrary to Māori custom and tikanga, and the Claimants‟ tino rangatiratanga, established the Native Land Court with the purpose of:

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[49] Wai 1750, #A12, at p. 61.
[50] Wai 1750, #A12, at p. 61.
[51] Wai 1750, #A12, at p. 62.

a) Facilitating the alienation of Māori land for settlement;

b) Commuting Māori customary title and rights into individualised Pākehā fee simple title;

c) Promoting and facilitating the de-tribalisation of Māori; and

d) Promoting and facilitating the assimilation of Māori into Pākehā customs and practices.

90. As a consequence of the operation of the Native Land Court, the Crown destabilised and/or destroyed traditional systems of tenure based on tikanga Māori.

91. The Crown established the Native Land Court within which title adjudication reduced customary hapū management over resources into ownership of individual interests, replacing variously layered customary land use rights with fixed boundaries over the land.

92. The Crown established the Native Land Court which had the effect of defeating chiefly and tribal authority and tino rangātiratanga.

Particulars

Native land legislation

93. In breach of the Treaty, the Crown enacted and implemented legislation which failed to provide hapū title, and the consequences of individualisation, which led to loss of hapū control and land alienation.

94. Title determination had the effect of defeating chiefly and tribal authority and tino rangatiratanga. Native land legislation allowed for individual application for title determination, without requiring hapū sanction; and awarded title to specified individuals who were free to sell their interests.

95. In 1856, it marked the reduction in Crown land acquisition. Hapū were increasingly unwilling to sell for a nominal price, and to sell at all. The Crown's objective was to extinguish customary title as a first step towards obtaining land for Pākehā expansion through the Native Lands Act 1862, and by

transforming customary title into defined titles awarded to individuals. The Crown awarded Māori with individual Crown Grants as a way of encouraging them to sell their unoccupied lands, despite acknowledging that "there is really no such thing as individual title that is not entangled with the general interest of the tribe...'".[52]

96. Between 1856 and 1862, the Crown alternatives to extinguish customary title gradually shifted from more inclusive systematic colonisation of tribal lands to 'direct purchase'.[53]

97. By the time the Native Land Court came to this district, the Crown was again heavily involved in seeking to purchase Māori land. In this district (at least until the 1880s), title determination and land alienation (to the Crown) were so closely entwined as to be inseparable.[54]

98. The Native Land Court individualised the titles to the remaining Whakatōhea lands, while imposing survey and court costs.

99. The Native Land Court was established without any consultation with or input from the customary owners.[55]

100. The operation of the Native Land Court destabilised and destroyed traditional systems of land tenure based on tikanga Māori including land rights, use, occupation and control. The system of individualisation that replaced customary law was economically and socially damaging to Māori.

101. Title adjudication reduced customary hapū management over resources into ownership of individual interests, replacing variously layered customary land use rights with fixed boundaries over the land.

[52] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at p 21.
[53] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at p 21.
[54] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 422.
[55] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 422.

Survey Fees

102. The Native Land Court process included a requirement to have land blocks surveyed prior to a title investigation hearing. In the case of several blocks awarded fully or partly to Whakatōhea, the cost of those surveys was so great that a large proportion of the land was immediately claimed by the Crown in lieu of paying the survey fees.

103. Two of the blocks awarded to Whakatōhea – Ōamaru and Tahora – were surveyed by Charles Baker under circumstances which, at the time, aroused strong opposition from the iwi involved, and criticism from government officials such as the Surveyor-General. Nevertheless, the surveys were accepted by the court, and the large costs involved were ultimately met by the iwi through loss of their land.[56]

104. In addition, the areas of land claimed by the Crown in lieu of survey fees were selected by Crown officials themselves. In the case of the Oamaru block in particular, a series of adjoining areas was selected to give the greatest overall value. This is likely to have reduced the value of the remaining land, and therefore to have further burdened the iwi with the ultimate cost of the surveys.

Ōamaru block

105. Māori title to the inquiry district was investigated by the Native Land Court in the nineteenth century and included the following blocks: Whitikau (1881), Whakapaupakihi (1882), Oamaru (1888), Takaputahi (1895) and Kapuarangi (1895).[57]

106. Ōamaru block is the inland block that lies more or less directly south of the Ōpape Reserve into which the Crown had forcibly concentrated all the hapū of Te Whakatōhea after the confiscations under the New Zealand Settlements Act 1863.

[56] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands ‘a waho’, Jane Luiten, at p 199.
[57] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 16.

107. In 1888, the Native Land Court held a title investigation hearing into the Oamaru block at Ōpōtiki, under Judge Scannell. The applicant in this case, Tauwha Nikora, claimed the entire Oamaru block for Ngāti Patu on grounds of ancestry and conquest.[58]

108. Judge Scannell asked for independent evidence to clarify the rival claims to the lands. Tiwai Piahana of Ngāti Patu, gave evidence of his hapū's rights to the Oamaru lands, but Judge Scannell found that his evidence supported the earlier discredited and withdrawn evidence of Tauwha Nikora of Ngāti Patu.[59] The judge therefore rejected Nikora's claim for the entire block. He said he considered Ngāti Patu 'a section of Ngāti Ngahere and as such should share in the Ngāti Ngahere section of this block.'[60]

109. The Court ignored the reality of overlapping and complex customary interests in favour of passing large tracts of land as a single block in order to reduce survey costs.[61]

110. The Court's exercise of conscribing individuals into equally fixed 'hapū' lists of owners was to 'tax Te Whakatōhea whakapapa into the twentieth century.[62]

111. Once the survey costs were formally discharged, each hapū was legally entitled to sell all or part of its share of the overall Oamaru block to the Crown. The inadequate tribal income generated by the Ōpape Reserve was the main motive for deciding to offer the Oamaru lands for sale.[63]

112. Following determination of title to the Oamaru block, the lands were purchased in increments by Land Purchase Officer, Richard Gill, in the form of undivided relative interests of individual registered owners and a take-it-or leave- it offer of 2 shillings per acre. Te Whakatōhea vendors had already paid for the survey

[58] Opotiki Minute Book no. 6 3-4 August 1888, pp. 225-226.
[59] Opotiki Minute Book no. 27 August 1888, p. 356.
[60] Opotiki Minute Book no. 27 August 1888, pp. 356-358.
[61] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 424.
[62] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 424.
[63] R,. Walker, *Opotiki Mai Tawhiti*, at p. 139.

of Oamaru in land. There was no consideration for landlessness let alone any provision for reserves.[64]

113. Obtaining Crown title to customary lands within the inquiry district proved "a costly, destructive and distressing ordeal" for Te Whakatōhea.[65]

CAUSE OF ACTION: CROWN PURCHASING

Breaches

114. The Crown pursued policies and practices specifically designed to undermine Ngāti Patumoana chiefly authority, and Māori customary law, over Ngāti Patumoana lands in order to facilitate the Crown acquisition of Ngāti Patumoana lands.

115. The Crown land purchase negotiations and transactions for Ngāti Patumoana lands included sharp and unfair practices.

116. The Crown conducted and concluded land purchases of Ngāti Patumoana shares prior to the determination of the actual share in the block by the Native Land Court.

117. The Crown enacted legislation and promulgated orders and proclamations that prohibited the alienation of Ngāti Patumoana lands to anyone but the Crown.

Particulars

118. The Stout-Ngata Commission had confirmed to the Crown that Māori in Whakatohea – were already effectively landless at 1900 and could ill-afford to lose any more land following the confiscation and Crown purchasing of the nineteenth century. Yet the Crown returned to this district to acquire more land, and also freed up private purchasers to buy up even more of the dwindling remnant left to a growing Māori population. As a result, people who already

[64] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 427.
[65] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 426.

lacked sufficient land for their support subsequently lost more than 60 percent of what little they retained at 1900.[66]

119. The transfer of lands that fell outside of the confiscated line, and out of hapū ownership from 1879 onwards was undertaken entirely by Crown purchase.[67]

120. Māori title to the inquiry district was investigated by the Native Land Court in the nineteenth century and included the following blocks: Whitikau (1881), Whakapaupakihi (1882), Oamaru (1888), Takaputahi (1895) and Kapuarangi (1895). A significant portion of this land was acquired by the Crown in the nineteenth and early twentieth century. Luiten describes this area as 'largely broken and forested high country, a sea of green ridges extending inland, inaccessible and remote'.[68]

121. The Crown entered into agreements for land purchase without considering potential landlessness of Māori or the need to provide sufficient reserves.[69]

122. The overarching priority of the Crown was to transfer as much land as possible out of Māori hands by extinguishing customary title.[70]

123. The Court process was biased and unreasonable in so far as it meant that any owners who did not agree to the sale were dispossessed with no means of recourse. Early pre-emptive Crown purchasing may have been done more transparently, but once agreements were obtained, the land would be transferred to a 'committee' of owners. [71]

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[66] Wai 1750, #A32 Twentieth Century Land Legislation and its Impacts North Eastern Bay of Plenty Inquiry, Bruce Stirling at pp 1-2.
[67] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 426.
[68] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 16.
[69] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 427.
[70] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at p 39.
[71] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at p 18.

124. The purchase of individual shares without the consideration of a wider hapū and the dynamics of whakapapa, became standard government practice. [72]

125. In the case of Whakapaupakihi and the Tahora 2 blocks, the Crown began negotiations for the purchase of lands before the Native Land Court had determined title to them. Advance payments and a Crown survey were made prior to their title investigations and Crown officials seem to have been aware that several iwi claimed the lands in question, but they were nevertheless willing to progress negotiations with whichever of the rival claimants appeared most willing to part with the lands to the Crown. In making its initial purchases, the Crown undoubtedly acted in a disreputable manner by arranging the purchase of land without ascertaining the land's owners.[73]

126. Crown pre-emption meant that Māori could not obtain a fair price for their land. Prices in this district offered by the Crown were low even by its own standards.[74]

127. The prices paid by the Crown were significantly less than what the land was worth and also lower than what private purchasers were offering.[75]

128. The valuation department determined the price the native department should pay for the land.[76]

CAUSE OF ACTION: PUBLIC WORKS TAKINGS

Breaches

129. In breach of its obligations pursuant to Te Tiriti o Waitangi, the Crown implemented and manipulated the public works regime to compulsorily acquire lands, estates, and taonga of Ngāti Ruatakenga and continues to do so to this day.

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[72] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 427.
[73] P Boston and S Oliver, Tahora, June 2002. Wai 894 Document #A22 at p. 317
[74] Wai 1750, #A25, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho', Jane Luiten, at p 429.
[75] Wai 1750, #A32 Twentieth Century Land Legislation and its Impacts North Eastern Bay of Plenty Inquiry, Bruce Stirling at p 66.
[76] Wai 1750, #A32 Twentieth Century Land Legislation and its Impacts North Eastern Bay of Plenty Inquiry, Bruce Stirling at p 67.

130. The Public Works Regime is fundamentally inconsistent with Te Tiriti o Waitangi in that it:

a) breaches the promise to protect Māori property rights;

b) fails to recognise Ngāti Patu's relationship with their ancestral land;

c) exposes Ngāti Patu's interests in valuable natural resources to alienation;

d) fails to adequately compensate Ngāti Patu for the losses;

e) has a disparate effect on Māori than on Pākehā; and

f) removed the protection of requiring consensus, notification and consultation.

Particulars

131. The legislation which allowed the Crown to compulsorily acquire Māori land for specified public purposes had two main strands: the Public Works Acts; and provisions in the Native Land Acts which allowed Māori land to be set aside for roads without compensation.

Native Land Acts

132. In breach of the Treaty, the Crown enacted and implemented:[77]

a) The Native Lands Act 1862 which, for example, included a provision that enabled the Governor to take and lay off up to five percent of land purchased from Māori without compensation or time limit;[78]

b) The Native Lands Act 1865, under which the Native Land Court became operative, and which, for example, extended the five percent rule to all Crown-granted Māori land, whether sold or not. This provision applied to all Māori land investigated by the Court and for which a grant was issued. There was no requirement to consult with owners over the need

[77] Wai 1750, #A29 Public Works Issues c.1870s-2010 by Heather Bassett and Richard Kay at pp 18-21.
[78] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, p 18.

for roads. Areas valued by Māori, such as urupā and other waahi tapu, were not protected;[79]

c) The Native Land Act 1909, which, for example, provided that road lines laid off by the Court could be proclaimed a public road without any requirement for compensation to be paid;[80]

d) The Native Land Amendment Act 1913 and the Native Land Act 1931, which provided that compensation was, in most cases, payable at the Court's discretion.[81]

The Public Works Act

133. In breach of the Treaty, the Crown also enacted and implemented:[82]

a) The Public Works Act 1880 which, for example, extended the five percent rule to apply to all Māori land that had gone through the Land Court and for which certificates of title or memorials of ownership had been issued.[83] This meant that it no longer applied only to Māori land for which Crown grants had been issued. Another important development introduced in the Public Works Act 1894 saw the rule extended to Māori customary land;[84]

b) The Immigration and Public Works Act 1870, which, for example, included provisions for the taking of land and the construction of works that were deemed to be of immediate concern to the development of settlement – roads, railways, and water supplies. This Act provided for the establishment of the Public Works Department;[85]

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[79] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, p 18.
[80] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, p 46.
[81] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, p 20.
[82] Wai 1750, #A29 Public Works Issues c.1870s-2010 by Heather Bassett and Richard Kay at pp 21 – 30.
[83] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, p 19.
[84] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, p 21.
[85] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, pp 22 -23.

c) The Public Works Act 1876 which, for example, extended the powers of local authorities to take Crown-granted Māori land and also Māori customary land. This Act also a provision that declared all roads in public use to be vested in the Crown without any requirement for payment of compensation;[86]

d) The Public Works Act 1882 which, for example, provided separate taking provisions for Māori land, that involved fewer protections than the general taking provisions. The Act removed ordinary notification and objection protections and provided that the Crown could enter upon and take Māori land two months after the gazetting of an Order in Council that specified the work that was to be carried out;[87]

e) The Public Works Act 1894 which, for example, extended the definition of a 'public work' to include any railway, tramway, road, street, gravel pit, quarry, bridge, drain, harbour, river work, electric telegraph, fortification, rifle range, artillery range, lighthouse, lunatic asylum, and public school;[88]

f) The Public Works Act 1928 which, for example included a separate section dealing with the taking of Māori lands that were not required for defence or railways purposes;[89] and

g) The Public Works Act 1981.[90]

Oamaru 2B Road

134. The Māori land on both sides of the Waioeka Gorge, in the Tahora and Oamaru blocks, was obtained by the Crown through large scale Crown purchases which are the subject of other research reports. The great majority of the forested land

[86] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, pp 23 -24.
[87] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, p 25.
[88] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, p 27.
[89] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, pp 27 -28.
[90] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, pp 29 – 30.

purchased by the Crown remained undeveloped and in Crown ownership. In respect to the road which runs through the gorge (now part of State Highway 2), almost all of it was set aside for roads out of the blocks either purchased by the Crown or obtained by the Crown in lieu of survey charges. The Waioeka Gorge Road (SH2) can be seen on the map below, running through Oamaru 2B, 2C, 2A, 5A and 5C.[91]

Road Board and Native Land Court Roads

135. The line of the road heading out of Omarumutu diverted in a loop to the east of the prominent maunga Makeo. In the late 1880s, the Ōpōtiki Road Board sought a road line to the west of the maunga instead which followed the course of the Waiaua River, to access both the inland Ōpape blocks and settler farms.[92]

136. As the Ōpape blocks were Native Reserves, there was no power to take land for roads under the five percent provisions without paying compensation.[93]

137. The titles to the Ōpape subdivisions were issued by the Native Land Court in 1904. While this meant that any further road takings had to be done either by warrant or under the Public Works Act, the issue of a Native Land Court title also meant that the Crown and local authorities now had a further 15 years to take up to five percent of the Native Land Court blocks for roads without paying compensation.[94]

138. In 1896, members of Ngāti Patu complained about a road line going through Ōpape 5 and 4 respectively.[95]

139. Small areas from Ōpape 4 and 5, where the road crossed the Waiaua Stream, were subject to taking under the Public Works Act in 1921.[96]

[91] Wai 1750, #A29 Public Works Issues c.1870s-2010 by Heather Bassett and Richard Kay at p 113.
[92] Wai 1750, #A29 Public Works Issues c.1870s-2010 by Heather Bassett and Richard Kay at [93].
[93] Wai 1750, #A29 Public Works Issues c.1870s-2010 by Heather Bassett and Richard Kay at [101].
[94] Wai 1750, #A29 Public Works Issues c.1870s-2010 by Heather Bassett and Richard Kay at [99].
[95] Wai 1750, #A29 Public Works Issues c.1870s-2010 by Heather Bassett and Richard Kay at p 44
[96] Wai 1750, #A29 Public Works Issues c.1870s-2010 by Heather Bassett and Richard Kay at [110].

CAUSE OF ACTION: LOCAL GOVERNMENT AND RATING

Breaches

140. The Crown established local government bodies that have extinguished the ability of Ngāti Patu to retain, maintain and exercise tino rangatiratanga over their rohe.

141. In doing so, the Crown has failed to recognise the mana (absolute sovereignty, control, and authority) of Ngāti Patu as guaranteed in the Treaty.

142. The Crown empowered local authorities to levy rates on Ngāti Patu land.

143. The Māori Land Court, through Crown support, placed charging orders on the whenua o Ngāti Patu to enforce the non-payments of rates.

Particulars

Māori participation

144. The Crown's establishment of local government bodies and other special purpose agencies operating at a district level facilitated the loss of hapū and iwi authority to the Crown.

145. The local council system replaced Māori rangatira for regional leadership and decision making. The extent to which local government provides for Māori participation in local government is low.

146. The Ōpōtiki County was established in 1899. There is no indication that Māori were involved with its establishment or even told of the county's split from the Whakatāne county.[97]

147. Māori were not elected to local authorities until after 1923 however, it was for one term only and it was not until 1941 that Māori were regularly elected onto the Ōpōtiki County Council.[98]

[97] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 226.
[98] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 226.

148. As many as three Māori councillors (out of a total of 10, 11 or 12) were elected at any one time (between 1957 and 1962 and 1980 to1987) but this was still disproportionate to the Māori population in the county which ranged from 47 to 58 per cent. Three Māori councillors was not the norm with just one Māori councillor elected in the seventeen-year period between 1962 and 1977 when the total number of councillors had reduced to seven and eight.[99]

149. A lack of title meant Māori were not entitled to vote in a county election. The local council system did not take into account the different reality for the rangatira and other Māori of the inquiry district who at this time had not been awarded title to land allocated after the confiscation.[100]

150. The right of Māori to vote in Ōpōtiki county elections was the subject of petitions from Ōpōtiki Pākehā in 1929 and 1932.[101]

151. The local government system did not ensure Māori representation commensurate with the Māori population of the county or that took into account the number and location of iwi in the county. This meant that a large section of the population had little influence over the Ōpōtiki County Council for large parts of the twentieth century.[102]

152. Legislation providing for the consideration of Māori concerns is limited to the Resource Management Act 1991 and the Local Government Act 2002.

Rates

153. The rating regime affords little to no benefit to Māori land and land owners. Māori faced difficulties paying rates due to limited ability to develop land and difficulties with tenure.

[99] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 226.
[100] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 227.
[101] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 227.
[102] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 229.

154. In 1883, the Crown knew that Māori had difficulty paying rates. Māori land was valued at up to 3x its value.[103]

155. When levying rates, the County Council had little interest in whether the land was capable of sustaining rates payments and the legislation require this to be considered this when levying rates.[104]

156. Rates charges have been used by the Councils as threats against Māori land owners in order to influence local government initiatives such as leasing or resource consent applications.[105]

157. If payment was not made for rates owed on land, the land would be alienated to recover debt. However, often, Māori landowners were not made aware of and would not know that there were accumulated rates owing on their land until it was being alienated to recover the debt.[106]

158. In the 1910s, Māori could be sued for unpaid rates which would impact whānau because of the responsibility of unpaid rates would impact other owners where land is held by more than one.[107]

159. Māori land liable for rates was deemed equivalent to European land. [108]

160. Between 1927 to 1971, Ōpōtiki County Council had the ability to exempt Māori land from rating. Despite this, only a small proportion of land was exempted and no comprehensive assessment of Māori land and its ability to support rates was undertaken.[109]

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[103] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 26.
[104] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 406.
[105] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 28.
[106] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 28.
[107] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 35-37.
[108] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 38.
[109] Wai 1750, #A26, Local Government and Māori Land Rating Issues Rep
ort, 1871-2021, Suzanne Woodley at p 48.

161. The Local Government (Rating) Act 2002 implemented a rates remission policy for unoccupied Māori land. Māoriland that was deemed unproductive still had rates levied until at least 2015.[110]

CAUSE OF ACTION – CULTURAL ISSUES

Breaches

162. The Crown, in breach of the principles of the Treaty of Waitangi has failed in its duty of good faith to actively protect waahi tapu and other sites of cultural significance within the rohe of Ngāti Patu.

163. The Crown, in breach of the principles of the Treaty of Waitangi, has failed in its duty to actively protect te reo Māori and taonga within the iwi of Te Whakatōhea.

Particulars

164. The Crown failed through various education policies to actively protect the following taonga tuku iho o Ngāti Patu:

a) te reo Maori,

b) tikanga,

c) kawa,

d) waiata,

e) karakia,

f) whakapapa;

g) waahi tapu; and

h) other taonga.

[110] Wai 1750, #A26, Local Government and Māori Land Rating Issues Report, 1871-2021, Suzanne Woodley at p 520.

165. The Crown failed to preserve tikanga Māori, and ensure that Ngāti Patumoana retained full exclusive and undisturbed possession of their taonga and failed to provide for the practice of their tikanga.

166. The Crown enacted assimilationist laws and policies resulting in near extinction of te reo Maori and tikanga.

New Zealand Education/schooling system

167. The Crown prohibited the use of te reo Maori in education and enforced punishment using te reo.

168. The Crown's education system denied Ngāti Patumoana the ability to promote world view, language, and culture. When it assumed governmental authority in New Zealand in 1840, the Crown brought with it an assumption that English would be the language of government and of the colonial society to be established here by British settlers.

169. Crown policy for the education of Māori focused on the English language.

170. The Native Trust Ordinance 1844 established a Board of Trustees to manage the proceeds of various Māori endowment reserves.[111]

171. The focus on English language was maintained in the Native Schools Act 1858, enacted by the recently established settler government.[112]

172. The Education Ordinance was the first established set of laws concerning Māori children in schools. Following this act, the requirement for the use of the English language would become an integral part of the New Zealand education system for all.

173. In 1847, Governor George Grey introduced the Education Ordinance Act as a way of disguising a policy, with aims of social control, assimilation and a means to further establish British rule in New Zealand. This was the first of

[111] The Native Trust Ordinance 1844.
[112] The Native Schools Act 1858

several policies which would serve to see the Māori language pushed out of schools in favour of English as a means of instruction.[113]

174. The Native Schools Act was used to establish primary schools in Māori communities. The Native Schools were controlled by the Department of Native Affairs and Māori leaders had no say in the curriculum. Therefore, traditional Māori knowledge was excluded and disqualified as inadequate. From the outset the priority was the teaching of English. This led to the exclusion of learning or speaking te reo Māori despite being the first language of the Māori children. Māori were then humiliated, shamed and physically punished while subjected to severe forms of corporal punishment that left generations scarred for the rest of their lives and too scared to speak their own native tongue. This led to the destruction of the Māori language which can be considered a form of linguistic genocide.[114]

175. By 1873, a schoolhouse had been built at Ōmarumutu for the children living on the Ōpape block. There were 88 children living close by and it was anticipated by Brabant that at least half would attend the school. By 1874 there were schools at Ōhiwa, Ōmarumutu and Ōpōtiki.[115]

176. In the wake of the New Zealand Wars, the government abandoned the mission schools in favour of a more centralised and secular system of Māori education that would be firmly under official control. Unsurprisingly, the Native Schools Act 1867 maintained the insistence of the earlier legislation on the use of English as the medium of instruction.[116]

177. This policy was reiterated in the Native Schools Code published in 1880, under which the use of te reo Māori by Native school teachers was strongly discouraged. Indeed, teachers appointed to Māori-speaking communities were

[113] Rachael Ka'ai-Mahuta "The impact of colonisation on te reo Māori: A critical review of the State education system" (2011) 4 No 1 Te Kaharoa 196 at 201.
[114] Amohia Boulton, Gill Potaka-Osborne, Lynley Cvitanovic, and Tania Williams Blyth "E tipu E rea: the care and protection of indigenous (Māori) children" [2018] NZLJ 3 at 69.
[115] Wai 1750, #A11, An Overview of Māori Political Engagement in the North-Eastern Bay of Plenty 1871-2017 by Dr Therese Crocker at p 54.
[116] Wai 1040 #A14 at 384. The subsequent application of this policy in Northland Native schools is discussed in greater detail John Barrington's 2005 report, 'Northland Language, Culture, and Education. Part One: Education' at (Chapter 2.1 and 2.2) s 21.

not expected to be able to speak te reo Māori, even though this was the only language of most of the pupils' parents.[117]

The Tohunga Suppression Act

178. Ngāti Patu had experts in tohungatanga, who lived together as whānau and in many cases as hapū on papakāinga throughout the rohe. Key roles and responsibilities were delegated, gifted or succeeded to, in order to maintain and protect the survival of the hapū. Some of these responsibilities included the dissemination of mātauranga, and the Reo of that particular field of mātauranga.

179. Tohunga were the repositories of knowledge within their particular fields which included Reo me ōna tikanga. Their mātauranga and its associated whakapapa was embedded in the Reo, which was essential to our physical, spiritual and cultural survival.

180. The Tohunga Suppression Act had a detrimental impact on Ngāti Patu in so far as it made it illegal for traditional Māori teachers, healers and experts to train their people in customary practices affecting Te Reo, Mātauranga Māori, tikanga, protocols and traditional knowledge. The impacts resulted in the decline in tohunga being able to share and pass on traditional knowledge and practices of health and well-being to their future generations. It was essentially illegal for Māori to be grounded in their cultural origins.

181. Both pieces of legislation contributed to the urbanisation of Ngāti Patu in so far as it marginalised their ability to operate according to their cultural practices. This forced Ngāti Patu to relocate to bigger cities which led to many whānau becoming dislocated from traditional Māori culture, language, spiritual rituals and practices and disconnected from their hapū and iwi. The impact of cultural dislocation and whānau disconnection has been a major factor which has contributed to the decline of Te Reo Māori that Ngāti Patu experience today.

[117] Education Department "Education: Native Schools" 1880 AJHR H-1f at 1-2.

The decline of Te Reo o Ngāti Patu.

182. Linguistic silencing of te reo Māori in general and near extinction of tribal dialects, te reo a Te Whakatōhea in particular, became the norm within their whānau and hapū which the Claimants assert processes of assimilation and colonisation were designed to achieve and which impacted on the roles of mothers and nurturers to the detriment of the intergenerational capture of Mātauranga Māori by whānau and hapū members with many across several generations unable to converse in their native tongue, their tribal dialects or even aware of the rich tapestry of their hapū and tribal histories.

183. The fluent use of te reo Māori is considered to be fundamental in the preservation of Ngāti Patu culture and today there are limited numbers who are able to converse confidently in te reo Māori.

184. As of the 2013 census, only 30% of Whakatōhea could hold a conversation about everyday things in te reo Māori, in comparison with 18.4 percent of the total population of Māori descent.[118] In 2018, 23.9% of the Māori population in the Opotiki district could speak Te Reo Māori.[119]

Waahi Tapu

185. Mana and rangatiratanga was expressed through customary use such as fishing, physical occupation with community māra, pā, kainga and wāhi tapu; and most importantly, by carrying out whānaungatanga responsibilities by caring for relationships within and between tribal groups.

186. Ngāti Patu assumed that their sacred sites would remain undisturbed regardless of the legal status of the land; however, the Crown exhibited no real regard to the protection of waahi tapu during the period of extensive Crown land acquisition in the Ōpōtiki district between the 1865's and 1900.

187. The Crown's confiscation and alienation of Ngāti Patu whenua resulted in a transfer from the Crown into private ownership of a multitude of sites which

[118] Statistics New Zealand "Iwi Individual profile: Whakatohea" (2013) <www.stats.govt.nz> at 7.
[119] Statistics New Zealand "2018 Census Place Summaries: Opotiki District" (2018) www.stats.govt.nz.

Māori had an association including pā and kāinga sites, cultivation sites, burial sites, and spiritual sites.

188. By way of overview, the Claimants position in relation to wāhi tapu is that:

    a) In failing to protect wāhi tapu from desecration and destruction, the Crown is in clear breach of the principles of active protection, partnership and good faith and in breach of te tino rangatiratanga recognised in Article II of Te Tiriti o Waitangi;

    b) The importance of wāhi tapu to Māori, more specifically, to Ngāti Patu, was well known both before and after the Treaty was signed. The Crown undertook in the Treaty to protect taonga but failed to do so;

    c) The Crown, through ineffectual legislative enactment and unsuccessful policy endeavour has failed to appropriately protect, preserve and maintain sites of wāhi tapu significance in the region.

    d) The Crown and many settlers had a complete disregard for Ngāti Patu notions of spirituality pertaining to wāhi tapu sites of significance. This included ignorance of the associated tikanga or protocol that was expected of those who entered or came into contact with wāhi tapu;

189. The Crowns' legislative regime has restricted Ngāti Patu from being able to protect their wāhi tapu. The following is a non-exhaustive list of legislative enactments which have hindered Ngāti Patu ability to protect wāhi tapu:

    a) Public Works Act 1864 (and its amendments);

    b) Criminal Code 1893;

    c) Native Land Act 1909 and 1931;

    d) Historic Places Act 1954;

    e) Town and Country Planning Act 1977;

    f) Conservation Act 1987; and

g) Resource Management Act 1991.

190. Through these legislative regimes, the Crown delegated its powers of management of land and resources, including wāhi tapu to local Government and environmental authorities including the Department of Conservation. These authorities have not sufficiently recognised the importance of wāhi tapu to Ngāti Patu resulting in the wide-spread desecration of wāhi tapu in and around this inquiry district.

CAUSE OF ACTION: ENVIRONMENTAL ISSUES

Breaches

191. In breach of the principles of Te Tiriti o Waitangi, the Crown developed and imposed upon Ngāti Patu a resource management regime that:

a) transferred ownership of non-land environmental resources to the Crown;

b) allows the Crown to benefit from those resources and exclude Ngāti Patu;

c) degrades the resources of Ngāti Patu while denying them the ability to exercise kaitiakitanga.

192. The regime usurps the ability of Ngāti Patu to retain, maintain, and exercise tino rangatiratanga over their environment, waterways and other environmental taonga by:

a) establishing Eurocentric bodies to manage and control the natural environment within the claimant rohe in place of the customary systems of Ngāti Patu;

b) delegating powers of authority to those established agencies; and

c) implementing legislation and encouraging policy to facilitate Eurocentric aims and objectives in relation to the environment.

193. The regime implemented by the Crown has breached the Treaty by failing to protect the natural taonga of Ngāti Patu from degradation.

194. Water pollution impacts detrimentally upon the:

a) Mauri of the Rivers;

b) The health and wellbeing of traditional fisheries; and

c) The ability to practice traditional activities such as preparing rongoa and weaving materials.

195. Ngāti Patu as mana whenua of these waterways and resources, assert and exercise rangatiratanga and kawanatanga as guaranteed in Article 2 of Te Tiriti o Waitangi.

196. The rivers are linked both ecologically and culturally to the lands that they drain, and together the land and the rivers link to the whakapapa of the claimants.

197. The Crown has failed to:

a) protect these rivers from erosion and pollution;

b) protect the fisheries associated with these waterways; and

c) protect the authority of Ngāti Patu over the waterways to control, manage and protect them.

198. Instead, the Crown through their actions have dispossessed Ngāti Patu of all rights over the rivers, waterways, fisheries, minerals and other taonga associated with the waterways.

Particulars

199. At 1840, Ngāti Patu exercised tino rangatiratanga over the environment within their rohe in accordance with their particular customary practices and tikanga. Fundamental to the exercise of tino rangatiratanga was the notion of kaitiakitanga.

200. At 1840, Ngāti Patu exercised kaitiakitanga over all elements of the natural environment within its sphere of authority including:

a) Marine and coastal area;

b) rivers, swamps, estuaries and other waterways;

c) fisheries;

d) forests; and

e) flora and fauna.

Resource Management and Environmental Issues

201. No record of consultation with Māori over the development of gas pipelines, despite the route going through archaeological sites important to Māori.[120]

202. No consultation with iwi and hapū in developing flood protections of the river.[121]

203. Various government plans have recognised the role Māori have as kaitiaki,[122] but it is far from clear that this has moved through into practice.

204. The RMA avoidance of individual iwi and hapū perspectives is not consistent with Te Tiriti.[123]

205. The council involves iwi and hapū on an irregular basis, at times decided by council, usually only to get feedback at particular stages set out in legislation. Frustrating for iwi and does not foster a healthy relationship.[124]

206. Consultation with iwi and hapū is based around Pākehā ideas of consultation and is at odds with Māori view.[125]

[120] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at 49.
[121] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 49.
[122] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at pp 51 – 55.
[123] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 133.
[124] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 135.
[125] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at pp 138 – 139.

Irrigation schemes

207. Three irrigation schemes were developed or proposed by the Crown to encourage intensification of farming and horticulture on the Opōtiki flats. Among these included:

    a) Waiaua Scheme, water intake on Waiaua Stream, approved by Order in Council (New Zealand Gazette 1984 page 262);[126] and

    b) Paerata Ridge Scheme, water intake on Waioweka River.[127]

208. Each water intake required the obtaining of a water right from the East Cape Catchment Board. Because these were community schemes, larger volumes of water were required at each water intake than an individual landowner might seek to obtain. The potential impact on the taking waters would therefore be greater.[128]

Rivers

209. What has since become legal riverbed was created by the first surveyors who marked out the rivers following confiscation in 1865. In their natural and unmodified state, the rivers would have wandered somewhat across the coastal plain through wetland environments, changing course whenever flood conditions prevailed. The surveyors were keen to incorporate fertile riverbank land and wetlands into sections to be made available for farming, and this tension between a river's needs for space to move around and farming's needs for good soils caused the first confinement of the waterways. They plotted the rivers as they found them at the time, and made no provision for a greater width of waterway that would recognise the dynamic nature of the river environment. This meant that rivers subsequently did not respect the legal waterway

[126] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 46.
[127] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 46.
[128] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 133.

boundaries. The consequence was erosion of titled land and the permanent drying out of waterway land.[129]

Land drainage schemes

210. Two land drainage schemes were identified and supported by the Crown, to enable low-lying lands alongside waterways to be drained and brought into agricultural 80 production. These were at Waiotahe and at Huntress Creek (Kukumoa). The Waiotahi Drainage Scheme was an Opotiki County Council initiative, and the date it was established is not known. The Huntress Creek Drainage Scheme was established by the Crown in 1916. [130]

211. Of the Waiotahe River, a Natural Resources Survey for the Bay of Plenty region published by the Crown in 1962 stated: The Waiotahi River, in western Opotiki county, is sluggish and subject to tidal influence. There is no serious flooding problem in its lower reaches; the main problem is in the watershed area where serious soil erosion is taking place. Here the country is mainly rugged and broken, and active erosion contributes considerable amounts of soil and detritus to the river, necessitating continued maintenance in the lower reaches. The Waiotahi Drainage Scheme was tackling the waterway infill downstream rather than the soil erosion upstream.[131]

Flooding

212. The Crown assumed control of all the waterways and harbours.[132]

213. Flooding has severely increased in Waiotahe.

214. The crown approach to waterways has largely been single-purpose (flood protection only) rather than multi-purpose or aimed at protecting the mauri of

[129] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 77-78.
[130] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 80.
[131] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 80.
[132] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 77.

the rivers too. Iwi and hapū involvement is minimal despite having strong interests in seeing environmentally healthy rivers.[133]

CAUSE OF ACTION: SOCIAL AND ECONOMIC

Breaches

215. Contrary to the principle of active protection, the Crown implemented a number of regimes, to alienate Ngāti Patu from their valuable resources including:

a) lands, forests, rivers;

b) fisheries rights; and

c) riparian rights.

216. The Crown not only failed to uphold and protect Ngāti Patu and Whakatōhea tino rangatiratanga over their whenua, kāinga and taonga, but actively engaged in theft, confiscation and destruction of the same.

217. The Crown failed to actively protect Ngāti Patu social and economic development by facilitating:

a) Māori political disempowerment at a local and central level;

b) social displacement and dislocation;

c) factionisation of whānau, hapū and iwi; and

d) the loss of economic independence and prosperity.

Particulars

218. Before the waging of war in Opotiki and the raupatu of the land, the resources available within Te Whakatōhea at the time was abundant and plentiful. Māori cultivated crops like potatoes and kumara and had an abundance of livestock in the area. The wealth and prosperity of the region was extensive.[134]

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[133] Wai 1750, #A24 Scoping report on environmental claims issues, c.1840 – 2010 by David Alexander at p 143.

[134] Ranginui Walker *Opotiki-Mai-Tawhiti: Capital of Whakatohea* (Penguin Books, Auckland

219. Whakatōhea owned multiple vessels. They part took in the growing economy of Aotearoa at the time by cultivating crops and selling them in Auckland. This contributed to the wealth of Whakatohea and enabled the purchase of tools, ploughs, carts, clothing, blankets, and other.[135]

220. During the invasion, the colonial forces were not adequately provisioned with regard to rations, supplies, or horses. They were expected to supply themselves by looting or confiscating provisions from Whakatōhea.[136]

221. The Crown engaged in the pillaging, looting, and plundering of the abundant resources of Whakatōhea and destroyed any resources that Whakatōhea could potentially use to hold out against a surrender.[137]

222. With Whakatōhea withdrawing into the bush before the colonial military, their kainga, farms and crops were left unprotected. The crops, livestock, horses, equipment and taonga left behind by Whakatōhea were plentiful.[138]

223. The colonial confiscated horses and gave government brands. All proceeds of the sale of some cattle went to the government. What was not wanted was destroyed.[139]

224. The prosperity of Whakatōhea took a combined hit at this time, with the sustained reduced economy from the Waikato War, the loss of their accrued wealth through pillaging, and later the confiscation of their lands.[140]

225. The colonial forces took and destroyed Whakatōhea pā, including Paerātā and Maraerohutu, previously occupied by the people of Mokomoko.[141]

2007) at 67.

[135] Ranginui Walker *Opotiki-Mai-Tawhiti: Capital of Whakatohea* (Penguin Books, Auckland 2007) at pp 63 -65.

[136] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 63.

[137] Wai 1750, #A30 War and Raupatu 1840-1871 report, Tony Walzl at 1094.

[138] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 63.

[139] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 63.

[140] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 64.

[141] Wai 1750, #A3 Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874, John McLellan at p 45.

226. In 1866, Te Whakatōhea were forced to relocate entirely Ōpape.[142] The relocation of Ngā hapū o Te Whakatōhea onto the reservation at Ōpape resulted in their impoverishment. The Ōpape reserve was not of good quality and at best 'second class land.'[143] Only 200 acres of the land were ploughable.[144]

227. This systematic exploitation and widespread theft, confiscation and destruction of deeply impacted the prosperity and well-being of Ngāti Patu.

228. Due to land confiscation, the native land court and Crown purchasing policy and practice, Te Whakatōhea had, by 1900, become primarily a labour force in an agricultural business belonging to others.[145]

229. The Opape and Hiwarau reserves where the bulk of the iwi had been relocated, was not fit for cultivation[146]

230. The Resident Magistrate drew a link between the illness prevalent in the district and the 'insufficiency of food from failure of crops'.[147]

231. In terms of citizenship, the chronic delay in issuing title had significant economic and social impacts on hapū.[148]

232. Ngāti Patumoana received no direct benefit from lands vested in Trust Board and have been deprived the ability to general their own economic development through forestry and other purposes.

233. The Crown failed to provide adequate education, health services, roading, housing, employment, and other entitlements to Ngāti Patumoana, to the

[142]Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at pp 65 – 66.
[143] Wai 1750, #A11, An Overview of Māori Political Engagement in the North-Eastern Bay of Plenty 1871-2017 by Dr Therese Crocker at p 64.
[144] Wai 1750, #A11, An Overview of Māori Political Engagement in the North-Eastern Bay of Plenty 1871-2017 by Dr Therese Crocker at p 62.
[145] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at pp 281.
[146] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at pp 280.
[147] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at pp 285.
[148] Wai 1750, #A12, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Jane Luiten, at pp 299.

detriment of their socio-economic position. This resulted in migration away from traditional rohe.

Employment

234. 61.2% of the Māori in the Ōpōtiki District earned under $30,000, compared to New Zealand's rate of 47.6%.[149]

235. In 2018, 23.5% of Whakatōhea reported a personal income exceeding $50,000 per year, compared to 31.6% of all New Zealanders.[150]

236. In the Ōpōtiki District, the following employment rates are helpful in grasping with the statement of employment: [151]

    a) 44% of Māori are employed full-time;

    b) 14.7% work part-time;

    c) 9.9% are unemployed; and

    d) 31.5% are not in the workforce. In comparison, New Zealand's overall unemployment rate is 4%.

237. These economic challenges are deeply rooted in the historical injustices of raupatu. The enduring impact of land confiscation has driven urbanisation as a response to seek improved job opportunities and economic stability.

238. The lack of employment in Ōpōtiki forced Whakatōhea into urban migration in the mid-20th century. 90% of Whakatōhea lived outside their traditional rohe by 2020, with many disconnected from their whanaunga, reo, tikanga, and whenua.

[149] Statistics New Zealand "2018 Census Place Summaries: Opotiki District" (2018) <www.stats.govt.nz>.
[150] Te Whata "Whakatohea: Employment" (2018) Te Whata <www.tewhata.io>.
[151] Statistics New Zealand "2018 Census Place Summaries: Opotiki District" (2018) <www.stats.govt.nz>.

Housing

239. Housing ownership has become very difficult for Whakatōhea due to the comparatively low incomes and increasing house prices. The situation is exacerbated by the lack of economic opportunity in the region, as evidenced by a growing number of people receiving a benefit in the Opotiki District.

240. In 2018, 16,095 people affiliated to Whakatōhea with 40% living in the Bay of Plenty Region.[152]

241. In 2013, 30% of Whakatōhea reported owning their own home. This was lower than the overall rate across New Zealand's overall of 65%.[153]

242. In 2013, 49.2% of Whakatōhea were living in rental accommodation, with 17% living in Housing New Zealand accommodation.[154]

243. In 2018, the Opotiki District recorded the second highest percentage of Māori living in crowded housing at 27%.[155]

PREJUDICE

244. The Claimants say that as a result of the acts and omissions of the Crown, Māori have suffered significant prejudice. As a consequence of the Crown's breaches as set out in this Amended Statement of Claim in the North Eastern Bay of Plenty District, Ngāti Patu has suffered and continues to suffer various prejudicial effects including:

    a) the loss of recognition of their mana and rangatiratanga and a consequential loss of economic, cultural and political autonomy;

    b) the loss of customary fisheries and waterways, access to and customary knowledge of such fisheries and waterways;

[152] Te Whata "Whakatohea: Population" (2018) Te Whata <www.tewhata.io>.
[153] Te Whata "Whakatohea: Home Ownership" (2018) Te Whata <www.tewhata.io>.
[154] Statistics New Zealand "2013 Quick Stats" (2013) <www.stats.govt.nz> at 22.
[155] Statistics New Zealand "Iwi Individual profile: Whakatohea" (2013) <www.stats.govt.nz> at 22.

c) the loss of knowledge of, or vastly reduced practice of, customary religious practices and tikanga;

d) the damage to and reduction of the ability to carry out their duties, obligations, and functions as kaitiaki;

e) the damage and reduction of their ability to properly host manuhiri with provisions of mahinga kai, and other material gifts from the resources within their rohe;

f) the loss of tribal lands and waterways;

g) the damage to the natural environment of the hapū and all its abundance of natural resources caused by the pollution of the lands, waterways, sea and air; and

h) the impairment of, or damage to, the spirit, wairua, mana, and ihi of the tribe and its members.

RELIEF SOUGHT

245. The Claimants seek findings that:

a) Their claim is well founded;

b) The Crown has acted in breach of Te Tiriti o Waitangi and its principles through their acts and omissions towards the Claimants; and

c) The Claimants have suffered prejudice as a result of Crown breaches of Te Tiriti as set out in their Statement of Claim.

246. The Claimants also seek by way of recommendation that:

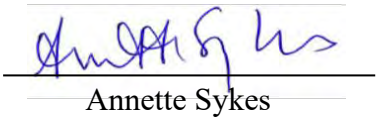
a) the Crown makes a full, public and unreserved apology for those actions and omissions that are found to be in breach of Te Tiriti;

b) the Crown pays full and comprehensive compensation to the Claimants for the above-particularised breaches of Te Tiriti;

c) the Crown provide the Claimants with sufficient cultural redress which appropriately recognises the losses suffered by the Claimants as a consequence of the Crown's breaches of Te Tiriti; and

d) any other such recommendation that the Tribunal should consider appropriate.

DATED at Rotorua this 5th day of February 2024



Annette Sykes

Kalei Delamere-Ririnui

Counsel for Claimants

TO: The Registrar, Waitangi Tribunal, Wellington
AND TO: The Crown Law Office
AND TO: Claimant Counsel for the Claimants

This **STATEMENT OF CLAIM** is filed by **ANNETTE SYKES** and **KALEI DELAMERE-RIRINUI** Counsel for the Claimants, of the firm Annette Sykes & Co. Ltd.

The address for service on the abovenamed Claimants is the offices of Annette Sykes & Co. Ltd 8 – Unit 1 Marguerita Street, Rotorua 3010.

Documents for service on the abovenamed Claimant may be left at the address for service or may be posted to the solicitor at Annette Sykes & Co., PO Box 734, Rotorua 3010.