IN THE WAITANGI TRIBUNAL

WAI 1750
WAI 1781

IN THE MATTER	of the Treaty of Waitangi Act 1975
AND	claims in the North-Eastern Bay of Plenty Inquiry (Wai 1750)
AND	a claim by Tracy Hillier and Rita Wordsworth on behalf of themselves and for the benefit of the hapū of Ngai Tamahaua (Wai 1781)

AMENDED PARTICULARISED STATEMENT OF CLAIM
FOR NGAI TAMAHAUA

DATED 23rd January 2024

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A. TE KEREME

1. This claim is brought on behalf of Ngai Tamahaua by Matenga Biddle for and on behalf of himself and Ngai Tamahaua, and for the benefit of the constituent hāpu and marae of Ngai Tamahaua to the extent that they choose to support this claim (herein referred to as "the Claimants"). The Claimant community of Ngai Tamahaua covered bythis claim, and their customary rohe are defined in Section B of this Statement of Claim.

2. The customary group for whom this claim is made consist of "*nga uri whakatupu o Ngai Tamahaua."*

3. The Waitangi Tribunal is requested pursuant to the provisions of the Treaty of Waitangi Act 1975 to inquire into this claim and to report on the causes of action and recommendations sought.

4. The claimant Matenga Biddle and the hapū, whānau and individuals ofNgai Tamahaua are Māori and claim that they have been and remain prejudicially affected by the ordinances, Acts, Regulations, policies, practices, acts and omissions of the Crown set out herein, which were enacted, promulgated, formulated, undertaken, done or omitted to be done by the Crown in breach of the principles of the Treaty of Waitangi.

5. Ngai Tamahaua also claim that the Crown has failed to adequately ensure the members of Ngai Tamahaua retained sufficient tribal lands for their reasonably foreseeable present and future needs.

6. Ngai Tamahaua allege specific breaches by the Crown of the Treaty of Waitangi, including its terms and principles. It is the Ngai Tamahaua contention that the Crown, through such breaches of the Treatyof Waitangi, has caused, and continues to cause, prejudice to the hapū members of Ngai Tamahaua.

B. NGAI TAMA HAUA

7. The Claimants and the hapū of Ngai Tamahaua are descended from Muriwai.

8. The following whakapapa of Ngai Tamahaua is provided:

Manawakiaitu = Tarawa
|
Tamakomutumutu Muriwai = Tamatea Matangi
| |
Atahaia Rangikurukuru
| |
Atawairua Whakauerehe
| |
Ataoterangi Waikura
| |
Atakorihi Amai Te Uru
| |
Rongomaiuruao Tamatea Hunaroa
| |
Tehihira Maiwakitenukuroa
| |
Tamatuhirae Hinewai
| |
Tamahaua = Kuraawherangi
| | |
Te Ururehe Kapuranga Te Aponga

9. Ngai Tamahaua is a hapū of Whakatōhea. The customary rohe of Whakatōhea includes all lands, waterways, wai and tupuna wai (waters and ancestral

waters), puna wai (spring-well including groundwaters), forests, fisheries and other taonga within the following general area:[1]

"Commencing at Pakihi, at the mouth of the river along the sea coast to the coast to the mouth of the Waiotahe stream to the mouth of the Ohiwa stream to Te Horo (a hill) and then turning inland southwards to Puhikoko (a hill) by straight line to Pukemoremore (a hill) then to Mapouriki (a hill) at one time a fighting pa. Then descending to Waimana Stream, Mapouriki being on the bank; following the Waimana Stream towards its source at TAutautahi (a hill) along the banks to the mouth of the Parau stream on to Kaharoa (an old settlement); from Kaharoa to Ta Harakeke a ridge leading towards Maungapohatu to Maungatapere (a hill) descending into Motu river to Kaitaura falls to Peketutu (a rock in the river that was an old crossing); leaving the river and up a ridge to Whakararonga (a hill); following the hill tops till it reaches Tipi o Houmea (a peak) descending towards Makomako (another hill) till it corsses Takaputahi stream to Ngaupoko tangata (a mountain) following the ridge to Kamakama (a mound resting place); along theridge to Oroi (a trig station) then turning seawards to Te Rangi on the sea coast, (Itis a stone visible on the sea coast at low tide); then along the sea coast to the mouth of the Ōpape stream, to Awahou stream to Tirohanga and back to Pakihi. This then was the domain of Ngai Tamahaua Hapū and other Whakatōhea Hapū, an area of approximately 490,000 acres."

10. Accordingly, the Claimants assert that Ngai Tamahaua hold customary interests in the lands, waterways, forests, fisheries and othertaonga within the above Whakatōhea rohe and have significant sites within that rohe.

11. The Claimants are aware that other hapū may hold, or assert, customary interests in some lands that are the subject of this claim. The Claimants do not seek to deny any such interests of other groupings in the lands that are the subject of this Statement of Claim. The Claimants do assert that since 1840 Ngai Tamahaua has held customary interests in the waterways, wai, ngāhere, and other resources within their hapū lands.

[1] Boundaries given are according to evidence given by Te Hoeroa Horokai and Heremia Hoeroa at Opotiki on the 14 July 1920.

12. The customary interests outlined in this Statement of Claim do not exhaustively capture the entirety of the Claimants' *tino rangatiratanga.*

C. NGA HARA O TE KARAUNA

13. The Claimants allege the following breaches of the Treaty of Waitangi,and its principles.

(I) NGAI TAMA HAUA HISTORICAL TREATY CLAIMS

14. Ngai Tamahaua whānui have been and remain prejudicially affected by Ordinances, Acts, Regulations, policies, practices, acts andomissions of the Crown which were enacted, promulgated, formulated,undertaken, done or omitted to be done by the Crown in breach of the principles of the Treaty of Waitangi before 21 September 1992.

15. Without limiting the above, the Claimant further alleges that in breach of the principles of the Treaty of Waitangi the Crown carried out, or is responsible for, the following acts and omissions before 21 September 1992:

    (a) As a consequence of Crown acts or omissions Ngai Tamahaua has lost lands from within their rohe;

    (b) As a consequence of Crown acts or omissions Ngai Tamahaua has lost, or failed to have properly recognized or protected, their customary interests in their lands and their wāhi tapu, forests, fisheries, waterways, and other taonga;

    (c) The Crown has failed to provide the same "Article 3" rights to Ngai Tamahaua as provided to Pākehā;

    (d) The Crown has failed to adequately recognize or provide for the full autonomy and te Tino Rangatiratanga of Ngai Tamahaua; and,

    (e) The Crown has failed to recognize and provide for Ngai Tamahaua.

16. The Claimant reserves the right to further particularise the above Historical Treaty Claims and amend them as required. Without limiting the above, the Claimants also make additional claims against the Crown as set out below.

(II) NGAI TAMA HAUA LANDLESSNESS

17. The Crown failed to prevent, rectify, or remedy the rapid alienation of Ngai Tamahaua lands so that the remaining land in hapū ownership isinsufficient for the present and future needs of Ngai Tamahaua.

18. At 1840 Ngai Tamahaua held customary interests within its rohe in the Ōpōtiki District.

19. The Crown, through the Native Land Court, failed to recognise or properly recognise and provide for all Ngai Tamahaua customary land interests so that the bulk of their customary lands were granted as absolute interests to other hapū and hapū individuals.

20. As a result of the Crowns actions in implementing mechanisms such asthe Native Land Court today Ngai Tamahaua have no customary lands held in accordance with tikanga Maori under the auspices of the hapū.

Particulars

Landlessness

(a) Pre-1840, Ngai Tamahaua retained mana over Ōpōtiki and the surrounding areas as part of Te Whakatōhea.

(b) In the late 1800s, Whakatōhea were focused on mere survival, and they had been forced into the wage economy.[2] This was a dramatic contrast to their situation pre-raupatu, set out below.[3]

(c) By the early 1900s Māori were leasing land from Europeans to grow crops, and Whakatōhea were forced to move away from the area due to insufficiency of land.[4]

(d) In the context of the Native Land Act 1873, the Crown's definition of sufficient land holdings to support maintenance was 50 acres per

[2] Wai 1750, #A11, Crocker, Dr Therese, *An Overview of Māori Political Engagement in the North-Eastern Bay of Plenty 1871-2017*, Waitangi Tribunal, August 2021, at page 43-44.
[3] Crocker, at page 74.
[4] Crocker, at page 74.

head.[5] However, by 1908, Whakatōhea was left with only 23 acres of mostly inadequate land per person.[6] The Stout-Ngata Commission found that Whakatōhea had 'very little land left in their hands'.[7]

(e) The Crown employed a blanket approach to confiscation post 1865 which had the legal effect of extinguishing customary title and rendering the entire district landless overnight.[8]

(f) Post-Raupatu, Te Whakatōhea (including Ngai Tamahaua) filed numerous petitions and letters with the Crown referring to the dire circumstances in which they found themselves.[9]

Missionary Purchases and the Old Land Claims Commission

(g) Prior to 1840, Pākehā entered into land deals with Māori which were broadly understood by Māori as a temporary right to occupy the land. The Old Land Claims Commission ("**OLCC**") was subsequently established to provide an avenue for Pākeha to have their pre-1840 land deals validated. In many cases, these deals were fraudulent or invalid. Despite this, the Old Land Claims Commission validated the purchases.[10]

(h) The Crown established the OLCC in 1841 to hear and validate old land claims despite knowing that Māori had not fully understood the consequences of alienation.[11]

(i) The Establishment of the OLCC was intended to protect Crown interests. It did not require the Commissioner to assess whether the price paid by settlers was adequate.[12]

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[5] Wai 1750, #A25, Luiten, Jane, *Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho'*, Waitangi Tribunal, August 2022, at page 33.
[6] Wai 1750, #A32, Stirling, Bruce, *Twentieth Century Land Legislation and its Impacts, North Eastern Bay of Plenty Inquiry*, CFRT, November 2023, at page 271.
[7] Crocker, at page 62.
[8] Wai 1750, #A12, *Luiten, Jane, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Waitangi Tribunal*, August 2021, at page 17.
[9] Crocker, at page 43-44.
[10] Wai 1750, #A30, Walzl, Tony, *War and Raupatu 1840 – 1871 Report*, Waitangi Tribunal, 15 March 2023, at page 168.
[11] Walzl, at page 1055.
[12] Walzl, at page 113.

(j) Old Land Claims were an integral part of Māori land loss in the Bay of Plenty, as 7,638 acres was set aside as "surplus" Crown land out of the missionary claims[13] - effectively another confiscation.

(k) In 1844, the OLCC heard Wilson's claim over lands in Pakihi and Ngaio:

i. Wilson claimed to have purchased two blocks of land in Ōpōtiki, one to the East of the Waioeka River (Ngaio Block) and one to the West (Pakihi Block).[14]

ii. The Wilson purchase was arranged before the outlaw of all European land alienation which prevented purchases of Māori land after 30th January 1840.[15]

iii. However, it is unclear whether the Wilson purchases were completed until after this proclamation due to conflicting evidence. The evidence available shows payments having been made in March 1840, the absence of a Deed of Purchase and contradictory evidence of Wilson being in Ōpōtiki until the 18th of January.[16]

iv. Despite Wilson's journal dating the purchases to have been completed between the 14th and 19th of January, the Deeds presented to the OLCC were dated 27th and 28th January.[17]

v. Despite evidentiary issues, and the Commissioner originally stating that Wilson's claim could not be heard, the OLCC proceeded to hear his claim and validated his title to the land.[18]

[13] Luiten part one, at page 42; Walzl, at page 168.
[14] Walzl, at page 72.
[15] Walzl, at page 53.
[16] Walzl, at page 67.
[17] Walzl, at page 67.
[18] Walzl, at page 53; Luiten part one, at page 40-42.

vi. Rather than returning the land to its rightful customary owners, the Crown declared the 7,630 acres of surplus lands from the Wilson purchases as Crown land.[19]

(l) The Crown's supposed 'surplus' land arising from Old Land Claims was also used to defeat claimants in the Compensation Court seeking the restoration of their confiscated lands at Waiotahe and Tirohanga.[20] The same was applied to claims to Waiwhakatoitoi on the east coast of Ōpōtiki.[21]

i. John Alexander Wilson's son produced his father's (fraudulent) deed of purchase.

(m) The Church claimed 4 acres in Ōpōtiki Township based on a deed dated 25 September 1841 (when private transactions were unlawful). Wilson, on behalf of the Church, argued that the deed was not a sale and purchase agreement, rather an agreement to occupy the house and grounds at Pākowhai. The judge upheld the claim and awarded the church an acre of land in the Ōpōtiki township being Lots 14,16,17 and the northern half of Lots 24 and 25.[22]

(III) RAUPATU AND CONFISCATION

21. The following allegations of the Claimants are made solely and exclusively on the basis of their whakapapa.

22. The Crown unjustly invaded Ngai Tamahaua and waged war against them causing devastating effects on the hapū. The Crown acted unlawfully in confiscating Ngai Tamahaua lands and relocating Ngai Tamahaua individuals to Native Reserves.

Waging of War

[19] Walzl, at page 167.
[20] Luiten part one, at page 12,.
[21] Luiten part one, at page 59-60
[22] Luiten part one, at page 60-61.

23. The Crown, on 8th September 1865, unjustifiably invaded Whakatōhea causing devastatingeffects on Ngai Tamahaua lands, resources and people.

24. The Crown, without just cause, waged war against Ngai Tamahaua persons, occupied Ngai Tamahaua lands, and caused Ngai Tamahaua casualties and loss of lives and loss of property and possessions including all their homes, kainga, settlements, Pā, urupā, wāhi tapu,and worldly possessions.

25. The Crown's forces, under the responsibility of the Crown, committed acts of atrocity against Ngai Tamahaua individuals, including women and children, not directly involved in the fighting.

26. The Crown's forces, under the responsibility of the Crown, stole personal and other taonga and property of Ngai Tamahaua individualsand failed to return such property.

27. The Crown waged war against Ngai Tamahaua individuals without regard for their personal or spiritual welfare.

28. The Crown unjustly labelled and stigmatised Ngai Tamahaua individuals as 'rebels' when those individuals were never in rebellion against the Crown.

29. The Crown improperly and without permission nor consent enteredinto the territories of Ngai Tamahaua and other hapū of Te Whakatōhea.

30. The Crown invaded the territories of Ngai Tamahaua and other hapū in order to destroy, undermine, or subjugate their rangatiratanga andthe resistance to the unlawful loss of their lands and assets.

31. The Crown without permission nor consent constructed stockades and forts within the lands of Ngai Tamahaua and other hapū and using materials and resources from those lands.

Confiscation of Ngai Tamahaua lands

32. The Crown wrongfully, unjustly, and illegally confiscated 143,870acres of Whakatōheā lands, including traditional Ngai Tamahaua lands.

33. The Crown wrongfully and unjustly, if not illegally, proclaimed under the New Zealand Settlements Act 1863 a wide and general confiscation district and

then took that same district as a settlement area and whether or not that area included lands of those who had not participated in the fighting.

34. The Crown wrongfully relocated Ngai Tamahaua individuals from their traditional lands at Kukumoa and onto the Ōpape Native Reserve thus restricting Ngai Tamahaua access to their traditional lands, waterways and resources and limiting their survival to those resources in close proximity to the Native Reserve.

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

36. The Crown failed to acknowledge that Ngai Tamahaua acted in self- defense of their property but alleged that individuals of Ngai Tamahaua were in "rebellion".

37. The Crown established a Compensation Court system which failed to properly inquire into which hapū and individuals had not participatedin fighting against the Crown's forces during the wars.

38. 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 individualized land ownership under the power of a Crown-based authority.

39. The Crown failed to return wāhi tapu and sacred sites to Ngai Tamahaua.

40. The Crown failed to sufficiently compensate Ngai Tamahaua for the confiscation of the hapū's lands and the losses of property and taonga.

41. The Crown has failed to recognize and provide any adequate relief for the devastation to the culture and spiritual well-being of Ngai Tamahaua and the loss of Ngai Tamahaua life.

Particulars

Ngai Tamahaua situation pre-raupatu

(a) Prior to 1835, Pākowhai, the main settlement of Whakatōhea, was a flourishing settlement that actively participated in the economy.[23] Profits made from trade were used to invest in public infrastructure and community-based government structures.[24]

(b) One soldier described Pākowhai as being covered with pigs and potatoes, with thousands of peach trees and 30,000 acres of flat land which was used for cultivation.[25]

(c) Whakatōhea were "very rich" prior to 1865, having owned multiple ships, farming equipment and other supplies.[26] Approximately 30 schooners were owned by Māori in Ōpōtiki, which would make regular trips to and from Auckland and the Bay of Islands to trade goods.[27]

Waging War

(a) On 4th January 1865 the Crown enacted the Peace Proclamation which ended the war in Waikato and Taranaki and prevented the Crown from confiscating land for acts of rebellion, nation-wide.[28]

(b) Subsequent to enacting the Peace Proclamation, on 4th September 1865, the Crown enacted martial Law in Ōpōtiki, which endured until 12th January 1867.[29]

(c) On 5th September 1865, the Crown instructed 500 men to invade Ōpōtiki with the justification being to arrest the "murderers of Volkner" and subsequently used military force on the entire population of Ōpōtiki.[30] The terms of this invasion were that the people of Ōpōtiki were to surrender the murderers of Volkner and if

[23] Walzl, at page 280.
[24] Walzl, at page 282.
[25] Walzl, at page 858.
[26] Walzl, at page 858.
[27] Walzl, at page 280.
[28] Wai 1750, #A03, McLellan, John, *Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874*, Waitangi Tribunal, July 2020, at page 73.
[29] Walzl, at page 858.
[30] Walzl, at page 858.

they failed to do so, their land would be confiscated under the New Zealand Settlements Act.[31]

(d) The invasion occurred without notification of the terms of invasion,[32] negotiation for the handover of the murderers,[33] or any opportunity for surrender of the murderers. [34] Instead, the terms were communicated 9 days after the Military invasion had occurred.[35]

(e) The Crown failed to negotiate with Whakatōhea for the release of "the murderers of Volkner" in return for not confiscating land as was the understanding at the time, choosing instead to rely on the NZ Settlements Act and confiscate land outright as punishment for alleged individual criminal behaviour.[36]

(f) All of Whakatōhea were treated as though they were in rebellion and guilty of his murder.[37] The Crown was also motivated by what it deemed to be the "Pai Mārire insurgency".[38]

(g) The Crown forces pillaged, stole and destroyed the wealth that Te Whakatōhea had built up through farming and trading over the previous decades.[39]

(h) Members of the Crown military force took advantage of the invasion as an opportunity for personal enrichment and had little regard for the property and livelihood of Te Whakatōhea.[40]

(i) The Crown engaged a "scorched earth" tactic, taking/destroying nearly all of Te Whakatōhea's food.[41]

[31] Walzl, at page 858.
[32] Walzl, at page 860.
[33] Walzl, at page 858.
[34] McLellan, at page 63.
[35] Mclellan, at page 77.
[36] Walzl, at pages 860 and 894.
[37] McLellan, at page 64.
[38] McLellan, at page 64.
[39] McLellan, at pages 50-51.
[40] McLellan, at page 52.
[41] McLellan, at page 52.

(j) There were 58 deaths among Whakatōhea during the landing and occupation of Opotiki by Crown forces.[42] The number of casualties was a significant percentage of the iwi's population.[43]

(k) Ngai Tamahaua Rangatira, Mokomoko, was unjustly accused of the murder of Volkner and on 4th October 1865, his pā were invaded by Crown military forces. The Crown forces proceeded to destroy both his pā at Maraerohutu and Paerata.

(l) On that same date, one of Mokomoko's wives, Kimohia, was brutally raped, mutilated and killed by the Crown troops.[44] Her body was then cast out to sea by Crown soldiers at Paerata Ridge.[45]

(m) Mokomoko was later wrongfully executed without sufficient evidence of his involvement with the murder on 17th May 1866.[46] As a result of this accusation, his lands were confiscated and his whānau and descendants have lived with the stigma of the association of Mokomoko with the murder of Volkner.[47]

Confiscation

(n) The Crown passed various laws including the New Zealand Settlements Act 1863 and its amendments to provide legislative authority for confiscation of, and subsequent compensation for the taking of, Māori lands by the Crown.[48]

(o) Crown legislation provided that once "rebellion" was identified, land could be confiscated from that Māori group.[49] However, the legislation concerning land confiscations was motivated by facilitating land for settlement by Pākeha.

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[42] McLellan, at pages 47 and 64.
[43] McLellan, at page 47.
[44] Refer Mokomoko whānau oral history.
[45] Wai 1750, #C035*, Brief of Evidence of Genevieve Ruwhiu-Pupuke on behalf of Ngai Tamahaua Hapū*, Waitangi Tribunal, 17 April 2023, at page 13.
[46] Crocker, at page 126.
[47] Walzl, at pages 468-478.
[48] McLellan, at pages 71 and 85.
[49] McLellan, at page 71.

(p) The legislation which authorized the confiscation of land did not sufficiently define who was considered a "rebel" in order to protect those who had their lands unjustly taken.[50]

(q) On 17 January 1866 the Bay of Plenty district became subject to the NZ Settlement Act 1863. [51] 440,000 acres of land was then deemed to be confiscated within the District.[52]

(r) The Crown then enacted the New Zealand Settlements Amendment Act 1866 which retrospectively validated the confiscation.[53]

(s) The Crown's blanket approach to confiscation extinguished customary title and deemed all land Crown land within the District.[54]

(t) Ōpōtiki Māori, when engaging in conflict with Crown forces, were acting in defence of their lands.[55]

(u) The confiscation was disproportionate to what was necessary under the authorising legislation.[56]

Return of Confiscated Lands

(v) The Confiscated Lands Act 1967 allowed the Governor to create reserves on confiscated land and issue confiscated land as compensation to those deemed not in rebellion, or no longer in rebellion to the Crown, outside of or in addition to the Compensation Court process.[57]

(w) 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 had not.[58]

[50] McLellan, at page 76.
[51] Luiten part one, at page 25; McLellan at pages 19 and 75
[52] McLellan, at page 80.
[53] McLellan, at page 72.
[54] Luiten Part one, at page 10.
[55] McLellan, at pages 77 and 86.
[56] McLellan, at page 86.
[57] McLellan, at page 91.
[58] McLellan, at pages 82 and 102.

Awards were conditional on "maintaining loyalty" until 1 January 1870.[59]

(x) Of land that was returned to Māori from the confiscation district, much was unsuitable for cultivation or other productive use – rather, productive land went to the military settlers or was put up for sale by the Crown.[60]

(y) JA Wilson (Crown agent charged with finalizing awards of compensation to Māori) returned land via out of court settlements to various 'groups and individuals of Whakatōhea'.[61] There was no structure or transparency there was around these out of court arrangements.[62]

(z) Later, Wilson's judgement and methods when acquiring Māori land for the Crown were officially inquired into during his time as Land Purchase Officer, leading to the implication that he may have been something of a "loose operator". [63]

(aa) At the time of Wilson's private negotiations, conflict was ongoing in the district and travel and communication were therefore hampered.[64] Wilson referred to the "absence of the bulk of the claimants" in the negotiations process.[65] Different hapū representatives would have had equal access to participate in these negotiations.[66]

(bb) Wilson decided on the size of the reserve lands at Ōpape[67]. However, the basis of the information he was working from to make this decision was dubious at best.[68] Wilson's census appears to have been the basis

[59] McLellan, at page 102.
[60] McLellan, at pages 83-84.
[61] McLellan, at page 84.
[62] McLellan, at page 92.
[63] McLellan, at page 89.
[64] McLellan, at page 93.
[65] McLellan, at page 98.
[66] McLellan, at page 93.
[67] McLellan, at page 98.
[68] McLellan, at page 98.

to ascertain "the acreage due to each non-rebellious native who may be able to prove a claim."[69]

Operation of the Compensation Courts

(cc) The Compensation Court was held in the Bay of Plenty between March and December 1867. To claim compensation, a written application was required with a cut-off date of 1 December 1866. At this time, conflict was still ongoing in the area. The Colonial Secretary would then decide whether the claim was "eligible" before forwarding them to the court.[70]

(dd) Many claimants and witnesses failed to attend the hearings due to being engaged in the war at Rotorua or busy harvesting crops.[71] The process of compensation court was arduous, and many claims were dismissed due to failure to appear despite the hearings being held at late notice and in remote locations.[72]

(ee) It appears there was no legal representative for the Māori claimants as part of the Compensation Court hearings.[73] Crown agent Wilson organised the Māori witnesses to attend the hearing and provide evidence in relation to their claims.[74] Wilson was also charged with organising witnesses to dispute claims he did not support.[75] His role was further compromised by being Special Commissioner and Crown Agent in the process.[76]

(ff) If a Te Whakatōhea claimant made a claim to land that had already been awarded to a Military settler, they would have to be awarded land elsewhere.[77]

[69] McLellan, at page 106.
[70] McLellan, at page 104.
[71] McLellan, at page 107.
[72] McLellan, at page 116.
[73] McLellan, at page 109.
[74] McLellan, at page 110.
[75] McLellan, at page 116.
[76] McLellan, at page 116.
[77] McLellan, at page 107-109.

(gg) Admitting involvement with Pai Mārire resulted in claims being dismissed.[78]

(hh) Many people did not make claims to the Compensation Court on the basis they believed they were excluded from the process as a result of being labelled "rebels".[79]

(ii) A number of married women in the confiscation district who would have otherwise had a claim, did not make claims to the Compensation Court as they were "under the impression they are implicated in their husband's rebellion" (even though it was subsequently established that being the wife of a rebel would not make them ineligible).[80]

(jj) The Compensation Court process pitted Māori against Māori and resulted in some Māori giving evidence against others solely to secure their own claims.[81]

(IV) NATIVE LAND LEGISLATION AND THE NATIVE LAND COURT

42. The Crown has through various Native Land legislation, from theNative Lands Act 1865, caused and permitted the alienation, fragmentation and individualisation of communal tribal titles to the traditional lands of Ngai Tamahaua, without proper consultation or consent of Ngai Tamahaua.

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

(a) facilitating the alienation of Māori land for settlement;

(b) commuting Māori customary title and rights into an individualized Pākehā fee simple title; promoting and facilitating the de-tribalisation of Māori; and

(c) promoting and facilitating the assimilation of Māori into Pākehā customs and practices.

[78] McLellan, at page 112.
[79] McLellan, at page 116.
[80] McLellan, at pages 114-115.
[81] McLellan, at page 116.

(d) The Crown established the Native Land Court without any proper consultation with or input from Ngai Tamahaua generally.

44. The Crown, as a consequence of the operation of the Native Land Court, destabilized and/or destroyed and failed to protect Ngai Tamahaua's traditional hapū-based systems of land tenure based on tikanga Māori including land rights, use, occupation and control.

45. 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.

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

47. The Crown enacted native land legislation that allowed for the making of title investigation applications by individuals with or without hapū sanction and awarded title to specified individuals who would be free to sell their interests.

48. The Crown established the Native Land Court that failed to properly inquire into Ngai Tamahaua customary interests, nor recognize and provide for Ngai Tamahaua customary interests, in hapū lands, forests, fisheries, waters and other taonga. In particular, the Native Land Court failed to inquire into and recognize Ngai Tamahauacustomary interests in their lands.

49. The Crown established the Native Land Court, which fostered debt and various indirect costs, most often to be repaid in land, arising out of substantial court costs and associated direct and indirect costs such as interpreters and legal fees, food supplies, accommodation costs and time spent away from cultivations.

50. The Crown forced Ngai Tamahaua to pay survey costs associated with customary title investigations or partitions whether or not Ngai Tamahaua wished to have their lands surveyed. Such costs were invariably repaid in land.

51. The Crown failed to protect Ngai Tamahaua from excessive survey charges.

52. The Crown unjustly took land for roads, without compensation, employing various Native Land and other legislation.

53. Through the imposition by the Crown of the Native Land Court process, Ngai Tamahaua were forced to bear the significant costs involved in advancing claims through the Court and the Crown failed to identify and then ameliorate the resulting detrimental effects of such court process.

Particulars

Native Land Legislation

(a) The **Native Lands Acts 1862/1865** individualised title to Māori land intentionally destroying the "communistic character" of Māori.[82]

(b) The **Native land Amendment Act 1877** allowed the Native Minister to apply to the Native Land Court to have the Crown's interest in any block determined in order to no longer require consent from all owners to sell Māori land.[83]

(c) The **Native Land Act 1894** provided for the establishment of incorporations (and legislation through the 20th century retained provisions relating to the structure and administration of incorporations).[84] Incorporated titles were then managed by a block committee of a committee of management (which ultimately facilitated sale as it made it easier for the Crown or private purchaser to deal with just one entity, rather than multiple individual owners).[85] The main intention of this act was "to facilitate the alienation (by lease, purchase or mortgage) of multiply owned land.[86]Under this Act, block committees had the authority to lease the land for a term not exceeding 30 years.[87]

[82] Crocker, at page 62.
[83] Luiten part two, at page 40-41.
[84] Stirling, at page 16.
[85] Stirling, at page 16.
[86] Stirling, at page 49.
[87] Stirling, at page 48.

(d) The **Native Land Settlement Act 1905** was established to identify what lands were required for Māori use and occupation, and what was "surplus", the latter to be compulsorily vested in the District Land Boards for lease and sale to Pākehā.[88] The Māori Land Boards were first established under this Act.[89]

(e) The **Native Land Settlement Act 1907** facilitated the lease, sale and settlement (by Pākehā) of Māori land. [90] This act provided for proclamation under Part 1 of "land available for settlement" (irrespective of owners wishes).[91]

(f) The landlessness provisions of the **Native Lands Act 1909** intended to prevent landlessness as a result of crown purchase, were either ignored or easily circumvented and so in practice provided little to no protection against landlessness.[92]

(g) The **Native Land Act 1909** further provided that a meeting of assembled owners could be called by the District Māori Land Board, acting on the direction of the Native Minister (who would usually be acting on the advice of the Native Land Purchase Board). The required quorum was only five owners, meaning absent owners would have no say at all.[93] An essential feature of the Act was the removal of all existing restrictions on the purchase of Māori land, such as existing provisions deeming a title to be inalienable, allowing Māori to alienate land in much the same way as Pākehā.[94]

(h) The **Māori Affairs Amendments Act 1967** allowed blocks of Māori land where there were four or fewer owners to be declared European land by a Court Registrar without application by (or presumably even knowledge of) any of the Māori landowners.[95] This policy was pushed

[88] Luiten part one, at page 35.
[89] Stirling, at page 136.
[90] Stirling, at pages 6-7.
[91] Stirling, at page 97
[92] Stirling, at page 66
[93] Stirling, at page 66
[94] Stirling, at page 136
[95] Stirling, at page 399

through despite considerable opposition from Māori, including Māori of this district.[96]

Native Land Court

(i) The Native Land Act 1862 was enacted with the goal of transforming customary/collective hapū title to individual title, despite acknowledging that the idea of individual title doesn't exist within tribes.[97]

(j) Māori audiences were "sold" the benefits associated with Crown title – secure and peaceable possession for generations to come - but this was patently not the objective of the reform.[98]

(k) The Native Land Court was not established with the intention of keeping Māori land; rather, it was intended to assess which land was available (and to make it available) for Pākehā settlement.[99]

(l) Although the Crown had withdrawn from private purchase at the time, the Native Land Court was intended to open the market in Māori land to private purchasers and was drafted entirely with private alienation in mind, rather than protection from further land alienation[100] OBJ

(m) 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.[101]

(n) The earliest applications for title determination in this district were made in 1879 – Whitikau, Whakapaukpākihi and Te Wera. These were

[96] Stirling, at page 405
[97] Luiten part one, at page 21
[98] Luiten part 2, at page 422.
[99] Luiten part 2, at page 25.
[100] Luiten part 2, at page 422
[101] Luiten part 2, at page 421.

the result of preliminary sale and purchase agreements reached beforehand with government land purchase agents. [102]

(o) Early applications for title determination arranged by Land Purchase Commissioner Wilson were made on the strength of hapū agreements to alienate their land to the Crown (albeit by lease rather than by sale).[103] Government incentives offered to the vendors included the undertaking to pay for survey costs and to reserve a percentage of land for Māori.[104]

(p) Due to these prior arrangements, where lands were contested within the inquiry district, the court's determination of title was "less than the objective or robust judicial investigation of customary law it purported to be."[105]

(q) The Court was improperly motivated and lacking in transparency:

a. For example, Luiten refers to the Whitikau and Whakapakpakihi title investigations as "at best, a patronizing attempt to conciliate traditional adversaries. At worst, the decision favoured a Crown ally while ensuring the Government gained possession of the valuable road frontage".[106] She also refers to Chief Judge Fenton's unexplained dismissal of Te Whakatōhea's application for rehearing Whitikau as "extraordinary."[107]

b. Luiten refers to a "lack of rigour applied to the difficult task of discerning the truth of competing claims" which "only seemed to encourage further licence" on the part of the Court and the Court's "apparent unconcern for customary take." [108]

[102] Luiten part 2, at page 422.
[103] Luiten part 2, at page 422.
[104] Luiten part 2, at page 427.
[105] Luiten part 2, at page 423.
[106] Luiten part 2, at page 423.
[107] Luiten part 2, at page 423.
[108] Luiten part 2, at page 423-424.

(r) 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 (Oamaru being such an example).[109]

(s) Referring to the Court's investigation of the Oamaru block, Luiten says that "Judge Wilson's allocation along arbitrarily fixed lines ran counter to fluid and overlapping hapū customary rates and was later deemed to be unviable."

(t) The Court tended to over-simplify whakapapa in the course of the title investigations. [110] The Court's exercise of conscribing individuals into fixed 'hapū' lists of owners was to "tax Te Whakatōhea whakapapa into the twentieth century." [111]

(u) Following determination of title to the Oamaru block, Oamaru lands were purchased incrementally by Land Purchase Officer, Richard Gill (a monopoly buyer due to Crown pre-emption being in place at this time) 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 of Oamaru in land. There was no consideration for landlessness let alone any provision for reserves.[112]

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

Survey charges

(w) From the late 1870s, the government's emphasis changed from purchase to survey, reflected in legislation which provided for the recovery of survey costs incurred by the Government to be recouped

[109] Luiten part 2, at page 424.
[110] Luiten part 2, at page 424.
[111] Luiten part 2, at page 424.
[112] Luiten part 2, at page 427.
[113] Luiten part 2, at page 426.

in land. The government therefore used survey as an alternative means to direct purchasing, to enable it to obtain Māori land.[114]

(x) Title determination rendered tribal lands into liabilities, primarily because of the expense of the requisite block survey.[115] From 1865-1879 Māori were directly liable for survey costs which, in some cases, left Māori with minimal land for themselves and no discernible benefit to selling.[116]

(y) From 1879, the Crown took over the cost of survey, however, the offer was not open handed, as the same owners had to bear the survey costs for their reserve and would be liable for survey costs and partition if they didn't sell.[117]

(z) Non-sellers were also required to pay pro-rata survey costs for resurveying the Crown's partitioned land from the 1890s onward.[118]

(aa) The example of Oamaru block is instructive – the large block survey got the land into court, but the resulting partition between interested hapū added another half as much again to the survey bill. Te Whakatōhea lost some 29% of the block to the government for a survey of their land they had not asked for, nor authorized. [119]

(bb) The location of the Crown's interest at the point of partition was invariably made by the Survey Department without any consultation by the former or current owners.[120]

(cc) By 1928, many Ōpape titles were burdened with survey debt in excess of their valuations, and many more were burdened with survey debt in excess of one-third of their value.[121]

[114] Luiten part 2, at page 426.
[115] Luiten part 2, at page 426.
[116] Luiten Part 2, at page 431.
[117] Luiten part 2, at page 430-431.
[118] Luiten part 2, at page 431.
[119] Luiten part 2, at page 426.
[120] Luiten part 2, at page 428.
[121] Stirling, at page 223.

(dd) Much of these costs were for surveys ill-suited to the land and based on arbitrary and unsuitable partition orders or road orders of the Native Land Court[122] making this a "heedless expense" imposed on the Māori owners. [123] Such high debts made consolidation and development impossible.[124]

(V) INADEQUATE RESERVES AND PROTECTION AGAINST ALIENATION OF RESERVES

54. The Crown failed to ensure that sufficient Ngai Tamahaua lands and resources were set aside as inalienable reserves for the present and future needs of Ngai Tamahaua.

Particulars

(a) The New Zealand Settlements Act 1863 did not contain legislative provisions for tribal reserves. It was not until 1867, four years after the legislation that had enabled confiscation, that provision was made for the reservation of land within confiscated districts from those from whom it had been taken. [125]

(b) The Crown took on the role itself of determining entitlement to the reserves, rather than the judicial investigation of customary rights in open court available outside of the confiscation district, the beneficiaries of 'returned' reserves were decided by the Crown's agent on the ground.[126]

(c) The Crown's failure to issue title, and the conditional nature of titles issued, was deliberate, as it meant that these reserves remained the property of the Crown.[127]

[122] Stirling, at page 225.
[123] Stirling, at page 226-228.
[124] Stirling, at page 230.
[125] Luiten part 2, at pages 24-25.
[126] Luiten part 2, at page 28.
[127] Luiten part 1, at pages 171 and 248.

Ōpape Native Reservation

(d) In 1866, Te Whakatōhea were forced to relocate entirely Ōpape. This was before any legal provision for the reservation existed.[128]

(e) The shift of Te Whakatōhea onto the reservation at Ōpape resulted in their impoverishment. This was in contrast to the prosperity of Pākehā who were now occupying Ōpōtiki.[129]

(f) The Ōpape reserve was not of good quality and at best 'second class land.'[130] Only 200 acres of the land were ploughable – this now being for 6 hapū.[131]

(g) Although it was allocated to Māori in the early 1870s, it was not until the early 1900s that the Native Land Court held a title investigation for the block. In the meantime, Ōpape reserve retained its legal status as Crown land due to the confiscation proclamation extinguishing Māori customary title[132]

(h) The question of how the reserve would be distributed or shared among the hapū was not addressed until 1879 (over 10 years after the hapū had first been shifted onto the land). [133] The lengthy time it took to finalise the Ōpape reserve resulted in internal disagreements and frustrations.[134]

Tribal Reserves from Purchases

(i) The allocation of Tribal Reserves, carved out of blocks purchased by the Crown, was another Crown Policy used to ensure that Māori would sell their lands and ultimately extinguish customary title.[135]

[128] Luiten part one, at pages 65 – 66.
[129] Crocker, at page 64.
[130] Crocker, at page 62.
[131] Luiten part one, at page 65.
[132] Wai 1750, #A29, Basset, Heather and Kay, Richard, Public Works Issues c. 1870s – 2010, CFRT, June 2023, at page 34.
[133] McLellan, at page 98.
[134] Crocker, at pages 62 and 79.
[135] Luiten part 2, at page 34.

(j) The increasing value of reserve land was used to persuade Māori to accept a nominal price for their lands, therefore weighing the market in favour of the Crown.[136] Tribal reserves were also regarded as the first step towards individualisation of title.[137]

(k) The Crown would promise to reserve ample portions of the land for the hapū's present and prospective wants and needs. In reality, the reserves were often not made at all, and when they were, they were very small portions poorly defined.[138] Furthermore, these supposedly inalienable lands were often purchased, sometimes in a matter of months.[139]

(l) The requirement was that Māori would be left with land "sufficient to support their maintenance". However, this requirement was only 50 acres per head.[140]

(m) Reserves were not intended to permanently prevent the alienation of Māori land, but simply delay it. The object was to give a longer time and better chance for Māori to assimilate to European ways before they will "settle down to the poverty and necessity for labour to which most will come".[141] Māori reserves were therefore used by the Crown to ensure landlessness and to assimilate Māori to European society.[142]

(n) Where reserves were granted, there were restrictions making them inalienable for large periods of time, leaving Māori unable to benefit.[143]

(o) In 1880, it became the duty of the Native Land Court to inquire into whether restrictions on alienation was warranted based on the sufficiency of land held by the owners. In order to remove the

[136] Luiten part 2, at page 432.
[137] Luiten part 1, at page 22.
[138] Luiten part 1, at pages 19-22; Luiten part 2, at page 34.
[139] Luiten part 1, at page 20.
[140] Luiten Part 2, at page 33.
[141] Luiten part 1, at page 23.
[142] Luiten part 1, at page 23; Luiten part 2 page 433.
[143] Luiten part 2, at page 432.

restrictions on alienation, the Native Minister had to be satisfied that there was "ample sufficient" land for their present and future maintenance.[144] In practice this requirement was either ignored or dispensed with on the basis of minimal evidence.

Unequal Treatment

(p) In 1874, a group from Upper Wairoa, Ngai Tamatea, were relocated onto lands in the inquiry district and awarded 334 acres of "excellent quality" land in Ōpōtiki. Ngai Tamatea's experience provides further insight into the Crown's provision of reserves generally in the inquiry district. Ngai Tamatea were given "land of excellent quality", whereas tangata whenua were banished to marginal lands, far from Ōpōtiki, in Ōpape.[145]

(q) In 1868 the Crown also relocated a large group from Te Arawa to provide military services in the area and cement Crown control.[146] The men were promised 25 acres each upon completion of their service. After their service they tried to return home but the Crown used similar tactics to ensure the men did not leave. Finally, after nearly 10 years, the government used the Confiscated Lands Act 1867 to award land at Ōhiwa and Waiōtahe to the Te Arawa men.[147]

(VI) FAILURE TO COMPENSATE OR REMEDY NGAI TAMA HAUA LANDLESSNESS

The Crown failed to adequately remedy the state of landlessness of Ngai Tamahaua and failed to adequately compensate for the Crown's failure to ensure sufficient land was retained in tribal ownership for thepresent and future needs of Ngai Tamahaua.

Particulars

(a) "Compensation" and "returned lands" policies reflected a major theme in 19th century crown policy, that Māori salvation lay in British

[144] Luiten part 2, at page 433.
[145] Luiten part 1, at page 248.
[146] Luiten part 1, at page 249.
[147] Luiten part 1, at page 274.

assimilation.[148] Less than one quarter of the land confiscated was returned to Māori.[149]

(b) There was a failure to inquire into the true circumstances in which Te Whakatōhea found themselves post-Raupatu. Crown magistrates 'sold a story' to the Crown of how well Te Whakatōhea were doing post Raupatu.[150] This dramatically slowed down the Crown's response, stopping them from realising just how bad the raupatu had been for Māori.

(c) Any land that was "returned" bore little resemblance to what was taken. Furthermore, the lands Ngai Tamahaua were "returned" to was not the land they were removed from, but different land altogether.[151]

Commissions of Inquiry

(d) The Sim Commission was established to find land available for settlement and based their recommendations upon that purpose.[152]

(e) However, the Sim Commission's focus was on whether the confiscations exceeded what was fair and just and didn't go back to the core question of whether the Raupatu was legitimate.[153]

(f) The Sim Commission made the problematic finding that if Māori did not resist the armed forces there would not have been any excuse for confiscating their lands.[154] Te Whakatōhea resistance was therefore characterised as hostility and aggression rather than self-defence.

(g) Despite the Sim Commission finding that Whakatōhea had no surplus land left, they recommended that most land be set aside for Pākehā settlement.[155]

[148] Luiten part 1, at page 10 and 16.
[149] McLellan, at page 126.
[150] Crocker, at page 43.
[151] Luiten part 1, at page 195.
[152] Stirling, at page 8.
[153] Crocker, at page 75.
[154] Crocker, at page 75.
[155] Stirling, at page 8.

(h) Following the Sim Commission, it was two decades before recommendations for compensation were actually paid by the Crown.[156] Ngai Tamahaua and Te Whakatōhea continued to seek land as a remedy, but the Crown only wanted to consider monetary compensation.[157]

(i) Later Commissions of inquiry (Jones and Stout-Ngata) were inadequate because:

i. the goal of the Stout-Ngata was to identify what further land could be extracted from Māori hands;

ii. The Stout-Ngata commission did not look at the issue of what should be done to remedy landlessness; and

iii. The Crown's reaction to the Jones commission (1920) was constrained and limited as did not want to open the question of compensation for Raupatu generally.[158]

(VII) CROWN PURCHASE POLICY AND PRACTICE

55. The Crown pursued policies and practices specifically designed to undermine Ngai Tamahaua chiefly authority, and Māori customary law, over Ngai Tamahaua lands in order to facilitate the Crownacquisition of Ngai Tamahaua lands.

56. The Crown land purchase negotiations and transactions for Ngai Tamahaua lands included sharp and unfair practices. Among other things Ngai Tamahaua individuals were paid minimal amounts for these lands, were not adequately consulted and were often paid ininstallments (sometimes over a period of years). The Crown failed to recognise and acknowledge the tribal ownership of Ngai Tamahaua lands and Ngai Tamahaua were often not adequately negotiated with or informed of such sales, the Crown preferring to deal with a handful of individuals who were not necessarily representative of all of Ngai Tamahaua.

[156] Crocker, at pages 62 and 79.
[157] Crocker, at page 79.
[158] Crocker, at page 69.

57. Ngai Tamahaua further allege that the Crown conducted and concluded land purchase negotiations prior to the determination of title in the Native Land Court.

58. Ngai Tamahaua also claim that later they had to pay rates to local bodies, on which they were not represented, for services they did not receive.

Particulars

Crown Purchase Policy

(a) The transfer of lands 'a waho' out of tribal ownership from 1879 onwards was undertaken entirely by Crown purchase.[159] The Crown entered into agreements for land purchase without considering potential landlessness of Māori or the need to provide sufficient reserves.[160]

(b) In the late 19th century and beyond, the overarching imperative of Crown Policy was to transfer as much land as possible out of Māori hands.[161] The extinguishment of customary title was a key feature of Crown Policy in the nineteenth century.[162]

(c) 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 (to then effect the already agreed to alienation). This calls into question the integrity of the Court process and meant that any owners who did not agree to the sale were dispossessed with no means of recourse.[163]

(d) The purchase of individual shares, devoid of any wider hapū mandate, became standard government practice from the mid-1880s.[164]

[159] Luiten part 2, at page 426.
[160] Luiten part 2, at page 427.
[161] Luiten part 1, at page 39.
[162] Luiten part 1, at page 18.
[163] Luiten part 2, at page 428.
[164] Luiten part 2, at page 427.

(e) Crown purchasing tactics became less transparent over time in the face of widespread resistance to sale and competition from the private sector.[165]

(f) Rather than compete with the private sector on the open market, from 1865, the Government used its statutory powers to maintain a virtual monopoly. Unlike private traders, the State could partake in pre-title negotiations which, once proclaimed, debarred anyone else from transacting for the same land, initially for two years, and later, indefinitely. Lands under lease to the Crown could not be sold to anyone else. [166]

(g) Crown purchase officers operated outside the law but were supported by the Government in doing so.[167]

(h) Purchase practices from 1873 onwards included purchasing individual interests from hapū members prior to title determination, and partitioning Crown interests in the acquired land. [168]

(i) The Crown endorsed the approach of advancing money to individuals before their title was determined. Oftentimes, the individuals receiving money were not endorsed by the hapū or were the wrong people.[169]

(j) By 1890s, Crown interest in purchasing Māori land was reignited and crown pre-emption returned, after a brief period of relief from Crown pre-emption. Subsequently, 80% of land in the Inquiry District was purchased by the Crown.[170]

Title Determination

[165] Luiten part 2, at page 428.
[166] Luiten part 2, at page 429.
[167] Luiten part 2, at page 95.
[168] Luiten part 2, at page 95.
[169] Luiten part 2, at page 95.
[170] Luiten part 2, at page 395.

(k) Judicial investigation of title was used as an alternative to Crown pre-emption.[171] Title determination and land alienation were so closely intertwined as to be inseparable, and colonisers deemed the title determination process as "direct purchase".[172]

(l) It was not compulsory to participate in the title determination process, however, rebellion towards the Crown was not an option for Whakatōhea post-Raupatu and non-participation risked having title granted to others.[173]

(m) No inquiries were made into the land holdings of the owners whose interests the Crown was seeking to purchase. This would have prevented any purchase from causing complete landlessness.[174]

(n) Title determination had promised Māori a secure possession with the same proprietary rights as British citizens. However, the hybrid title of Māori freehold land that actually emerged was neither hapū based nor unencumbered.[175]

(o) One object of the nineteenth century land legislation was the detribalization of Māori society. Title determination was one example of this as it was particularly destructive to hapū relationships.[176]

(p) The Crown's approach to title was based on British ideas of customary title: that all pre-treaty purchases were invalid on the grounds that Māori were not sufficiently civilized to make permanent transfers of land.[177]

(q) Title determination was about making customary land available for settlement, so issues are raised around making customary landowners bear the cost of that exercise.[178]

[171] Luiten Part 2, at 421.
[172] Luiten part 2, at page 422.
[173] Luiten part 2, at page 425.
[174] Stirling, at page 67.
[175] Luiten part 1, at page 39.
[176] Luiten Part 2, at page 434.
[177] Luiten part 1, at page 17.
[178] Luiten part 2, at page 431.

(r) The progression of native land legislation throughout the 20th century continued to provide various mechanisms that had the effect of facilitating the wholescale loss of land by Māori, predominantly to Crown purchasing.[179]

Purchase Prices

(s) The prices paid by the Crown were significantly lower than what private purchasers were willing to pay[180]

(t) Observers in the late 1800s described that land was being stripped from Māori at a merely "nominal value".[181] The Crown offered a minute price for "waste lands" and then on-sold those lands to private purchasers for a profit. The Crown therefore maintained a virtual monopoly over land purchase instead of competing with the private sector and paying fair prices for Māori land.[182]

(u) After Crown land was purchased, it was put up for sale by ballot, forcing the original owners to compete with Pākehā sellers.[183]

(v) There was an inherent conflict of interest, in that the Valuation Department determined the price that the Native Department should pay for the land.[184]

(w) Crown purchase prices did not allow for the value of timber to be taken into account, further lowering the price paid for land.[185]

(x) 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 the Crown's own standards.[186]

[179] Stirling, at page 66.
[180] Stirling, at page 66.
[181] Stirling, at page 66.
[182] Luiten part 2, at page 429.
[183] Stirling, at page 65.
[184] Stirling, at page 67.
[185] Stirling, at page 68.
[186] Luiten part 2, at page 429.

(y) Within the Inquiry district, Crown purchases have distinctly lower price points compared with other Districts. In some cases, the purchase price for a similar land block was less than half of that paid for Māori land on the East Coast.[187]

(z) Markets and prices are determined by law and the law was constantly amended to facilitate Crown purchase for the purpose of settlement, leaving Māori "crushed by unbearable transaction costs".[188]

Crown Leasing

(aa) Māori could not obtain a fair price for their lands which were leased to the Crown, as any lands leased to the Crown could also not be on-sold.[189]

(bb) A Native land Court hearing held in December 1873 determined the title to 100,000+ acres of land spreading from the Waioeka river to the Motu river – known as the "Motu Lands".[190]

(cc) The outcome of this hearing was a Crown lease of 150,000 acres extending from the Motu and Waioeka rivers for 200 pounds p.a. rising every 5 years 50 pounds to 400 pounds. The Māori owners were obliged to repay the cost of survey at 100p p.a. at the 15th year. 500 acres were reserved for the Māori owners on the bank of the Motu at Kaitaura.[191] This price point was too low for the value of the land and the reserves were insufficient.[192]

(VIII) PUBLIC WORKS TAKINGS

59. The Crown adopted a policy of compulsory acquisition of Māori lands for various public works without adequate consultation with, or compensation for, Ngai Tamahaua.

[187] Luiten part 2, at page 429.
[188] Luiten part 2, at page 430.
[189] Luiten part 2, at page 429.
[190] Luiten part 2, at page 57.
[191] Luiten part 2, at page 63.
[192] Luiten part 2, at page 74.

60. The Crown failed to ensure that all lands taken for public works were used for the purpose for which they were taken and returned to Māori when they were no longer required for that purpose.

61. The Crown failed to consider and exhaust all potential options, such asleasing or some other legal mechanism by which title to lands could beheld by Ngai Tamahaua subject to public use, before taking land for public works.

62. The Crown, as a result of these takings destroyed Ngai Tamahaua whenua, for example, the destruction of the hapū maunga, Puketapu which now has a toilet erected on it. In doing so, the Crown has totally disregarded Ngai Tamahaua mana whenua and has prevented Ngai Tamahaua from using the maunga for traditional purposes. Furthermore, the road which now traverses between Puketapu and the hapū marae was constructed by cutting into Puketapu which originally connected to the maunga on which the marae is situated. Actions such as these are extremely disrespectful to Ngai Tamahaua mana and an undeniable breach of Ngai Tamahaua rights under the Treaty of Waitangi.

Particulars

Ōpape Reserve Roads

(a) In 1879, two roads were surveyed through the Ōpape reserve – a coast road and an inland road. No further steps were taken to legalise the road at this time. [193]

(b) When the original road lines were laid out through the block, they were technically still on Crown land, and not 'taken' from Māori land. Nevertheless, the land used for roads should be considered as deducted from the total area of reserve land for Māori at Ōpape, as when the reserve titles were finally awarded, the main road lines were excluded.[194]

[193] Bassett & Kay, at page 37.
[194] Bassett & Kay, at page 34.

(c) Some of the Ōpape Reserve divisions were left landlocked (Ōpape 4, 6 and 8) when roads were surveyed through the reserve. When the Crown subdivided its own lands for settlement it always ensured that each division had legal access. [195]

(d) Furthermore, roading through the Ōpape Reserve was inadequate for the first several decades of the reserve's existence (leading to further difficulties of the hapū occupying the block to use, develop or even merely sustain themselves from that land):

i. The surveyed line of the road (surveyed in 1880 at the time of surveying the reserve) heading out of Ōmarumutu was unsuitable and the road board complained. [196]

ii. In 1887, Pākeha landowner Gaskill sought a road line along the Waiua River. [197]

iii. In 1892, Ngāti Rua wrote to the Native Minister asking to widen the road to Poverty Bay; which was not suitable, and dangerous for vehicles and horses. They further stated that the hapū were unable to bring out their crops. Despite this, the Native Department merely noted that "nothing could be done". [198]

iv. Prior to the titles being properly issued (which didn't happen until 1904), local authorities were told the road would have to be taken under the Public Works Act, which meant paying compensation; something they were reluctant to do. [199]

v. The Native Minister at the time (1892) said 'I would suggest that if it is intended to spend any money on Roads for the

[195] Bassett & Kay, at page 36.
[196] Bassett & Kay, at page 42.
[197] Bassett & Kay, at page 42.
[198] Bassett & Kay, at page 44.
[199] Bassett & Kay, at page 42.

Natives they be made to contribute towards the work in either cash or labour.' [200]

vi. An 1895 account discussed travelling on the beach from Ōmarumutu to Opotiki and having to wait for the tide to recede. The coast road appears to have been nothing more than an unformed path through the sandhills, a road (on paper only) running along the beach which was "impassable". [201]

vii. Even in 1932, driving on the new road through Ōpape was described as "narrow and tortuous". [202]

Motu Road (the inland road through the Ōpape Reserve)

(e) The original 1880 survey required multiple corrections which were undertaken in the form of a series of small deviations between 1909 – 1911. [203]

(f) The Road was surveyed under a warrant (allowing 5% of land to be taken without compensation) from the Governor dated 16 January 1909. It does not appear that the necessary notice was given to the owners at this time regarding this survey and the deviations. [204]

(g) There were no follow-up Gazette notices regarding the taking of land for the road at this time. [205]

(h) When the Māori Land Court surveyed the subdivision of Ōpape 3, 4, 5 and 6 it laid out road lines. [206] The subdivision road lines had the status of Māori land, meaning the Crown had no responsibility to improve or maintain the roads.[207]

[200] Bassett & Kay, at page 43.
[201] Bassett & Kay, at page 65.
[202] Bassett & Kay, at page 67.
[203] Bassett & Kay, at page 47.
[204] Bassett & Kay, at page 47.
[205] Bassett & Kay, at page 50.
[206] Bassett & Kay, at page 50.
[207] Bassett & Kay, at page 52.

(i) Most of these were not proclaimed as public roads until much later, in 1934. [208] However, when a Pākehā owner wanted the road to his property improved, it was proclaimed a public road. [209] Eventually in 1939, the roads traversing Ōpape 3, 4, 5 and 6 were declared public roads. [210]

(j) In 1943, a proclamation was issued which legalised all the various road takings through Ōpape 3, 4, 5 and 6 (these roads formed part of the main highway system in the district). [211] No compensation would have ever been required for any of these roads. [212]

(k) When Ōpape 1, 2 and 3 were partitioned by the Native Land Court between 1910 and 1920, the surveyed subdivision plan included a route that was further inland. [213] It seems that this was considered a replacement for the original 1880 road line through the reserve as the usual notice and payment of compensation requirements for a PWA taking were considered but not used. [214]

(l) In 1922, the Court made an order confirming the new road lines that had been surveyed along the coast and made a recommendation to the Minister of Lands that it should be a public road. Under these sections, no compensation was required to be paid for the land used for the road. The coast road totaled an area of approx. 33 acres. [215]

(m) In the 1960s and 70s deviations and upgrades to State Highway 35 through Ōpape were made to provide more direct routes.[216] There is nothing to indicate arrangements for prior consent with the owners.[217] This is the first time we are aware of compensation being paid to owners of the Ōpape Reserve for land taken for roads through the

[208] Bassett & Kay, at page 52.
[209] Bassett & Kay, at page 52.
[210] Bassett & Kay, at page 58.
[211] Bassett & Kay, at page 60.
[212] Bassett &Kay, at page 61.
[213] Bassett & Kay, at page 62.
[214] Bassett & Kay, at page 62.
[215] Bassett & Kay, at page 66.
[216] Bassett & Kay, at page 67.
[217] Bassett & Kay, at page 67.

Ōpape Reserve. It was the responsibility of the Māori Trustee to distribute the compensation and even to negotiate the amount of compensation. [218]

(n) A major deviation through the Ōpape 1 subdivisions was taken in 1973. This created the current line of SH35, replacing the hairpin route around Ōpape Marae and along the Ōpape Stream. [219] The area of land totaled approx. 8 acres. [220] Records relating to the negotiation and distribution of compensation for this were not able to be found. [221]

(o) Māori Trustee staff were skeptical as to whether it was even economic to distribute the compensation when it was for a small amount and to be divided between large numbers of owners. [222]

Ōpape Coast Road

(p) The original 1880 coast "road" was never actually formed into a road. However, when the new route inland was laid off by the Native Land Court as part of partitioning the various blocks, the original 1880 road was never closed and therefore has remained a legal road, though never formed. [223]

(q) Significant portions are currently held as road reserves vested in the Ōpōtiki District Council, which give legal access along the beachfront across Māori owned blocks and, at the Ōpape end, a short section has been sealed as public beach access and public carparking area.[224]

(r) Today, the former coach road over the headland is vested in the Ōpōtiki District Council and is known as the Tauturangi Walkway. Even though the legal status is as a "road reserve", it is clearly not being used for this purpose.[225]

[218] Bassett & Kay, at page 70.
[219] Bassett & Kay, at page 71.
[220] Bassett & Kay, at page 72.
[221] Bassett & Kay, at page 73.
[222] Bassett & Kay, at page 69.
[223] Bassett & Kay, at page 73.
[224] Bassett & Kay, at page 74.
[225] Bassett & Kay, at page 76.

(VI) CROWN ADMINISTERED DISTRICT LAND BOARD

63. The Crown operated District Māori Land Boards and through such Boards, failed to adequately consult or obtain proper consent from the

individuals or chiefs of Ngai Tamahaua before alienating largeamounts of lands.

64. The Crown through District Māori Land Boards failed to adequately check when alienating lands whether the beneficial hapū owners of thelands had sufficient other lands for their reasonably foreseeable presentand future needs**.**

Particulars

Māori Land Boards

(a) The Māori Land Boards were first established by the Māori Land Settlement Act 1905.[226]

(b) The Māori Land Boards replaced the Māori Land Councils which had been established under the Māori Lands Administration Act 1900. These Councils were elected by Māori.[227]

(c) In 1905, these elected Councils were replaced by a three-member committee appointed by the Governor (only one of which was required to be Māori). [228] The goal of the 1905 Act was to make more Māori land available for settlement than had been the case under the 1900 Act.

(d) In 1913, this was reduced to two board members, being the Native Land Court Judge for the district and his Registrar. This meant the Māori Land Boards were Pākehā institutions with no direct involvement from Māori.[229]

[226] Stirling, at page 136.
[227] Stirling, at page 136.
[228] Stirling, at page 136.
[229] Stirling, at page 136.

(e) In this district, the Waiariki District Māori Land Board operated pursuant to the Native Land Act 1909 and its amendments. The Board was a "dominant feature" of Crown and private purchasing from 1909-1952.[230]

(f) Under the 1909 Act, if a block had 10 or fewer owners, it could be alienated by the District Māori Land Board as agent or trustee for the owners. The Board could also call a meeting of owners to consider an offer of alienation.[231]

(g) Every alienation of land required confirmation by the district Māori Land Board. However, in practice, this provided little restriction:[232]

i. The Board was short-staffed;

ii. The statutory restrictions were rarely assessed in any detail (e.g. - there is no example of a purchase being refused due to a vendor being rendered landless;[233]

iii. The information on which the Board relied on to make its assessments for alienation was provided by the purchaser "leaving open a window to sharp practice".

(h) Where land had more than 10 owners, the prospective purchaser could apply to the Board to summon a meeting of owners to be attended by a Board representative. The quorum for such meetings was very low. The Board would call the meetings over and over until the necessary quorum was met, or the Crown resorted to purchasing the individual shares.[234]

(i) The effect of the 1909 Act was that the Board could effectively arrange the sale of Māori land without consulting all the owners and certainly avoided gaining the consent of all the owners. Doubt has been

[230] Stirling, at page 135.
[231] Stirling, at page 137.
[232] Stirling, at page 138.
[233] Stirling, at page 142.
[234] Stirling, at page 139.

expressed on whether owners were adequately informed about the meetings.[235]

(j) The only recourse for owners opposed to alienation was to lodge a "memorial of dissent" at the meeting or formally submit one within a very short timeframe. [236] The Board was not obliged to heed this, however, as it was required to consider the "public interest" and the "interests of the owners" (as it interpreted them to be) when confirming the resolution of owners. [237]

(k) Once the Board confirmed the resolution at a meeting of owners it became the agent for the owners in completing the alienation.[238]

(VII) LAND DEVELOPMENT SCHEMES

65. The Crown established, maintained, administered, and managed Land Development Schemes on Ngai Tamahaua lands without proper or adequate consultation and/or without providing proper and adequate mechanisms for Ngai Tamahaua participation, expression of concernswith and/or input into the management of the Schemes.

66. The Crown failed to properly advise Ngai Tamahaua of the full implications of the inclusion of their lands in the Development Schemes.

67. The Crown failed to properly provide all of the benefits that were promised to Ngai Tamahaua as a result of the Development Schemes.

68. The Crown took over ultimate management of the Ngai Tamahaua land in the Development Schemes to the exclusion of the land management rights of the Ngai Tamahaua landowners.

Particulars

Development Schemes

[235] Stirling, at page 139.
[236] Stirling, at page 139.
[237] Stirling, at page 139.
[238] Stirling, at page 139.

(a) From 1894, the Advances to Settlers Office provided Pākeha with cheap finance and advice to develop farming operations, while Māori were effectively excluded as a result of the terms.[239] Māori in the district received no finance from this office, while thousands of Pākehā were assisted to the tune of millions of pounds.[240]

(b) Māori did not have access to a similar form of finance until the development schemes were financed in the 1930s[241] putting them almost two generations behind their Pākeha neighbours in the establishment of farms.[242]

(c) Farmers taking up a farm on a development scheme had to pay rent to the land's owners (which may or may not have included the farmer). The benefit (in the form of rent) was minimal, as the improvements effected by the farmer during the term of the lease would have to be compensated for by the owners from the low rental income.[243] In some cases, the sinking fund set up to repay the lessee at the end of the lease amounted to half of the owners' rental income.[244]

(d) The goal of the development schemes, which was to create a multitude of individually owned units, was never realistic from the start. Most farmers who were operating as part of the scheme were in debt due to the uneconomically sized blocks they were dealing with.[245]

(e) There were huge delays in resolving the leases for the farmers and the land's owners. Without these arrangements being in place, neither party had security of tenure or income. [246]

(f) Vast tracts of land in the Ōpape block were proclaimed and designated as part of a development scheme under the Māori Affairs Act 1953.

[239] Stirling, at page 272.
[240] Stirling, at page 273.
[241] Stirling, at page 272.
[242] Stirling, at page 273.
[243] Stirling, at page 287.
[244] Stirling, at page 340.
[245] Stirling, at page 314.
[246] Stirling, at page 332.

The Crown then failed to follow through and actually implement the development of these blocks. The land subsequently fell into a poor state, yet the owners were prevented from being able to do anything due to the continuing designation.

(g) Development schemes (and the accompanying policy of title consolidation) did not deliver what the Crown had promised for Te Whakatōhea.

Title Consolidation

(h) Land development and title consolidation were two closely related Crown policies.[247]

(i) Consolidation entailed large scale exchange of individual Māori interests with an intent to amass sufficient interests to merit the partitioning out of those interests as a properly surveyed and individualised title in order to facilitate the subsequent development of that land as an economic unit.[248] However, this process involved converting a customary interest in a specific piece of land to a mathematical share in a wider area, a share that could be moved around and aggregated with other shares into an individual block which could then be located in a place that bore little resemblance to the customary basis of the original right to the land.[249]

(j) Consolidation was used by the Crown in blocks where it had acquired diverse undivided individual interests in large blocks (or groups of blocks) to consolidate its own interests. [250] The Crown took advantage of consolidation to obtain pay back to itself for debts such as survey liens or rates charging orders against Māori land, taking a portion of the Māori land in question to cover these debts and adding it to the Crown's land holdings.[251] Stirling says that the remission of survey

[247] Stirling, at page 211-212.
[248] Stirling, at page 212.
[249] Stirling, at page 212.
[250] Stirling, at page 211.
[251] Stirling, at page 211.

charges to the Crown soon emerged as a key factor in consolidation schemes.[252]

(VIII) MAORI TRUSTEE

69. The Crown, through the establishment and operation of the Office of the Maori Trustee, failed to adequately protect the retention of Ngai Tamahaua lands by empowering the Maori Trustee to facilitate the subdivision and sale of Ngai Tamahaua lands.

70. The Crown failed to adequately monitor the activities of the Maori Trustee and correct or provide relief in situations where the Maori Trustee caused prejudice to Ngai Tamahaua.

Particulars

Conversion / compulsory acquisition of uneconomic interests

(a) The Māori affairs policy from the 1950s was focused on "title improvement" – a central plank of which was conversion.[253]

(b) Under the Māori Affairs Act 1953, the Māori Trustee could purchase individual interests from those prepared to sell which purchasing funded from the conversion fund – a fund acquired through the sale of Māori interests.[254] Unlike other alienations this did not require the confirmation of the Māori Land Court.[255]

(c) The Māori Trustee could then sell those interests to any Māori (or descendant of any Māori), to a Body Corporate, or to the Crown for Māori housing or land development.[256]

(d) The worst part of the conversion policy was that "uneconomic" interests (worth less than 10 pounds) would be compulsorily vested in

[252] Stirling, at page 214.
[253] Stirling, p 355
[254] Stirling, p 357
[255] Stirling 357
[256] Stirling, p 357

the Māori Trustee at the point of succession or partition (quite possibly unbeknownst to the owner).

(e) Undivided interests were therefore taken in this piecemeal way "until sufficient had been acquired to bestow upon one fortunate Māori". It was not even necessary that the transferee be a pre-existing owner in the title, and in a number of instances, they were not.[257]

(f) The policy was presented as a way for owners to consolidate their disparate interests in an individual owner.[258]

(g) The "10-pound rule" (uneconomic interest) resulted in those who had lost their interest not understanding what had occurred (for example, if they were not present for the Court hearing) and believing they had been disinherited. This led to blame being placed at the foot of the person who had filed the succession application.

(h) Stirling has identified around 50 titles in this district that were affected by the conversion policy and had shares compulsorily acquired by the Māori Trustee. Most of these titles were in the Ōpape subdivisions, but they also included Hiwarau, Whakapaupaikihi and Whitikau.[259] At least two titles were alienated completely as a result of conversion.[260]

(i) There are a number of examples of the Māori Trustee acquiring fractionalized shares and holding on to them for years to no apparent end, until later transferring them to other owners without achieving anything other than a "fractional interests being shuffled between owners like cards in a stacked deck."[261]

(j) The Māori Trustee facilitated a tenant in the Whakapaupakihi block (Mangatu Incorporation) to acquire a large ownership share in the

[257] Stirling, p 368
[258] Stirling, p 357
[259] Stirling, p 362. Pp 364-365
[260] Stirling, p 379
[261] Stirling, p 369

block through acquiring converted shares and selling them to Incorporation. [262]

(IX) MAORI TRUST BOARDS

71. 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 Ngai Tamahaua lands.

72. The Crown instituted the Maori Trust Boards Act 1955 with the effect of undermining the tino rangatiratanga of Ngai Tamahaua by makinga Trust Board subject to Crown policy and control, and hence acted in breach of the Treaty of Waitangi. The implementation of this device undermined the mana of the rangatira within the rohe and displaced Ngai Tamahaua, along with other Hapū by state-defined institutions such as the Whakatōhea Maori Trust Board (a Trust Board underMaori Trust Boards Act 1955). Ngai Tamahaua allege that the introduction of the legislation and the Trust Board was yet another mechanism in which the Crown marginalised and continues to marginalise Hapū authority.

73. The Crown, attempted to partially compensate for past injustices by way of grant given in 1952 to Whakatōhea but offered nothing in the way of alternative structures to have payment given to Whakatōhea and specifically Ngai Tamahaua. The compensation offered by the Crown was paid directly to a wide tribal authority and not directly to Ngai Tamahaua.

74. Ngai Tamahaua as a hapū have received no direct benefit from the lands that have been vested in the Trust Board and by virtue of the factthat it was vested in the Trust Board have been deprived of the ability to generate their own economic development through forestry andother purposes.

75. Ngai Tamahaua allege that the compensation that was paid did not reflect how Whakatōhea had been negatively affected by the injustices

[262] Stirling, pp 373-379

of the Crown including the waging war and the extensive andunjustified confiscation of Whakatōhea lands.

76. Ngai Tamahaua further allege that the Crown has failed to ensure thatMaori Trust Boards created pursuant to the Maori Trust Board Act have diligently followed the accountability processes contained thereinand therefore has failed to honour its obligation of active protection as guaranteed by the Treaty of Waitangi to Ngai Tamahaua.

77. The Crown, in failing to recognise its obligation of good faith underthe Treaty of Waitangi, and by using a Trust Board structure as the recipient of Ngai Tamahaua lands has prevented the enjoyment of economic prosperity by the Hapū of Ngai Tamahaua.

Particulars

(a) The Whakatōhea Māori Trust Board ("**WMTB**") was originally established in response to Whakatōhea's landlessness as an entity to hold funds for compensation in the form of a lump sum to be used to purchase land.[263]The Department of Māori Affairs would then fund the development of whatever land was purchased into farm land to generate income.[264]

(b) The WMTB was established under the Māori Purposes Act 1949 which provided for the Board to administer the compensation for land loss and acquire and administer land for settlement and development for the benefit of the Tribe.[265]

(c) Despite the WMTB receiving a relatively high income since its inception,[266] in 1963, half a century after petitioning for compensation for the Raupatu, the first tangible return was made to each of the hapū; that being the annual grant of 20p which increased to $80 in 1971.[267]

[263] Stirling, at pages 411-412.
[264] Stirling, at page 413.
[265] Stirling, at page 414.
[266] Stirling, at page 415.
[267] Stirling, at page 426.

(X) SOCIO-ECONOMIC DISADVANTAGE

78. The Crown adopted and effected various policies, actions, and practices relating to, or affecting, Ngai Tamahaua people and their customary lands which had negative impacts upon their economic and social circumstances.

79. The Crown failed to provide proper and adequate education, health services, roading, housing, employment and other entitlements to Ngai Tamahaua, to the detriment of their socio-economic position. The Crown's failure to deliver such entitlements has forced many Ngai Tamahaua people to move away from their ancestral lands and those who remain in the traditional rohe continue to have inadequate public services available to them comparative to those who are situated in larger townships.

80. The Crown introduced the Native Land Court, which had immediate and long-term socio-economic impacts on Ngai Tamahaua.

Particulars

(a) 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.[268]

(b) Due to the inadequacy of the Ōpape and Hiwarau reserves, Te Whakatōhea struggled to grow enough food for themselves let alone to sell and make a profit.[269]

(c) As a result of the incorporation and associated leasing of 'surplus' lands in the 20th century (e.g. Waiohoata, Awaawakino and Ōpape 1), the Crown failed to enable owners to utilise their lands rather than lease to others. [270]

(d) Illness was prevalent in the area, linked to the lack of food from the poor-quality land.[271]

[268] Luiten part 1, at page 281.
[269] Luiten part 1, at page 280.
[270] Luiten part 1, at page 282.
[271] Luiten part 1, at page 285.

(e) In terms of citizenship, the chronic delay in issuing title had significant economic and social impacts on hapū. In 1883, in eagerness to secure their own partition, Ngāti Muriwai paid for the survey of Ōpape 3A. Thirty years later they were forced to pay again in order to secure their title at Waiaua.[272] Similar experiences have been detailed for Ngai Tama, Ngāti Rua.[273]

(f) Despite receiving multiple requests, the government refused to fix the road at Ōpape after they forced all of Ngai Tama to relocate there. They couldn't farm food or animals properly and couldn't transport anything due to the dangerous road.[274]

(g) Māori in the area suffered from impoverishment and disease. Teachers would repeatedly request medical supplies, to no avail. At one point a teacher asked for a girl with tuberculosis to be sent to a health department, however, one month later she died.[275]

(h) On top of the hardship and habitual disease, tangata whenua were also presented with a host of subtle reminders of their marginalized/lesser status in the new order.[276]

(i) Māori children were also treated badly at school; there are recounts of teachers "flogging" Māori too severely and using rough language towards them.[277]

(XI) FAILURE TO PROTECT NGA TAONGA TUKU IHO O NGAI TAMA HAUA

81. The Crown failed through various education policies to actively protect Te Reo Māori for Ngai Tamahaua individuals, and the tikanga, kawa, ritenga, waiata, karakia, whakapapa and other taonga, which are the collective property of Ngai Tamahaua.

[272] Luiten part 1, at page 299.
[273] Luiten part 1, at page 300.
[274] Luiten part 1, at page 292.
[275] Luiten part 1, at page 295.
[276] Luiten part 1, at page 297.
[277] Luiten part 1, at page 298.

82. The Crown pursued assimilationist policies in education resulting inthe near extinction of Te Reo Māori and tikanga among Ngai Tamahaua.

83. The Crown prohibited the use of Te Reo Māori in schools thereby derogating the right of Ngai Tamahaua to maintain and develop their language, culture and customs. Ngai Tamahaua individuals werepunished for speaking Te Reo Maori and therefore denied a basic human right fundamental to their identity.

84. The Crown took the process of education out of the hands of Ngai Tamahaua elders. The Māori world view, language and culture were displaced by the economic and social world view promoted by the Crown.

85. The Crown further denied Ngai Tamahaua tohunga the right to practice traditional Maori medicine and wairuatanga through the implementation of the Tohunga Suppression Act 1907. Under the Act penalties were imposed on tohunga (experts in Maori medicine and Maori spirituality) and therefore designed to oppress and suppress mātauranga Maori and any or all attempts by Ngai Tamahaua and all tangata whenua to keep control of their own wellbeing.

86. The Crown failed to preserve tikanga Māori, failed to ensure Ngai Tamahaua retained full exclusive and undisturbed possession of their taonga and failed to provide for the practice of their religion andtikanga.

(XII) RATING ISSUES

87. The Crown empowered local authorities to levy rates on Ngai Tamahaua land causing an unfair burden upon Ngai Tamahaua.

88. The Crown empowered the Maori Land Court to place charging orderson Ngai Tamahaua lands to enforce the non-payments of rates.

Particulars

(a) Despite non-provision of roads and inadequacy or safety issues with the roads provided,[278] the rating of Māori land was first introduced in 1871 by the Highway Board for the provision of roads.[279]

(b) Māori faced difficulties paying rates due to limited ability to develop land and difficulties with tenure.[280]

Levying Rates

(c) Despite Crown knowledge that Māori had difficulty paying rates, in 1883, Māori land was valued at up to 3x its value.[281]

(d) In the 1930s, the governing legislation exempted lands set down for development from paying rates until they could sustain payment after development. However, the Ōpōtiki County Council ignored the legislation, instead choosing to levy rates on the land regardless.[282]

(e) 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.[283]

Notice of Non-Payment

(f) Oftentimes, Māori landowners were not made aware of accumulated rates owing on their land until it was being alienated to recover the debt,[284] or a charging order was made, which incurred a 1-% non-payment levy.[285]

[278] Wai 1750, #A26, Woodley, Suzanne, *Local Government and Māori Land Issues Report, 1871 – 2021*, CFRT, 30 September 2022, at page 521.
[279] Woodley, at page 575.
[280] Woodley, at page 25.
[281] Woodley, at page 26.
[282] Woodley, at page 406.
[283] Woodley, at page 404.
[284] Woodley, at page 28.
[285] Woodley, at page 405.

(g) Throughout the 1880s-1890s, rates demands were sent to the Colonial Treasurer, rather than being sent directly to Māori owners, as Under the Crown and Native Lands rating Act 1882.[286]

(h) Notices for demands were gazetted in te reo but in order for Māori to know whether they were required to pay rates, they had to physically inspect a roll at the county, town or road board office.[287]

(i) In the 1910s, Māori could be sued for unpaid rates, placing the burden of unpaid rates on one or two owners where land is held in multiplicity.[288]

(j) The **Rating Amendment Act 1910 and 1913** allowed land to be alienated for non-payment of rates by the relevant local board or the public trustee and didn't require ministerial consent.[289]

(k) The **Native Land Rating Act 1924** allowed the rating authority to apply for a charging order on the title of lands where rates were owed and made Māori land liable for rates at a value equivalent to European land.[290]

(l) Between 1927 to 1971, despite Ōpōtiki County Council having the ability to exempt Māori land from rating, only a small proportion of land was exempted and no comprehensive assessment of Māori land or its ability to support rates was undertaken.[291]

(m) In the late 1980s, the Magistrate Court was used to prosecute non-payment of rates. This court did not have the same legislative jurisdiction as the Native Land Court which could assess the title and whether it had the capacity to sustain rates payments.[292]

[286] Woodley, at page 27.
[287] Woodley, at page 27.
[288] Woodley, at page 35-37.
[289] Woodley, at page 35.
[290] Woodley, at page 38.
[291] Woodley, at page 48.
[292] Woodley, at page 517.

(n) The **Local Government (Rating) Act 2002** adopted a rates remission policy for unoccupied Māori land, however, land that was deemed unproductive still had rates levied until at least 2015.[293]

(XIII) LOCAL GOVERNMENT

89. The Crown failed to ensure that local authorities established a relationship with Ngai Tamahaua that was consistent with the Treaty and its principles.

90. The Crown failed to ensure that local authorities, or such other bodies acting as agents of the Crown, worked with Ngai Tamahaua to develop proper sewerage, roading, and other infrastructure in Ngai Tamahaua's rohe.

91. The Crown failed to ensure that local authorities, or other such bodies acting as agents of the Crown, protected water quality, wahi tapu and places of cultural importance in Ngai Tamahaua's rohe.

92. The Crown enacted the Resource Management Act 1991 which does not provide for nor protect the rangātiratanga of, and Kaitiaki responsibilities of, Ngai Tamahaua over their lands, forests, fisheries, waters, wahi tapu, waterways, and other taonga.

Particulars

(a) In 1871, the Roading Board was established as the first local government authority.[294] The establishment of local authorities was driven by Pākehā settlers with little support from Māori.[295]

Representation Issues

(b) The establishment of the first local authorities in the district had little Māori involvement and the legislation establishing these bodies didn't require Māori participation.[296] Nor was there any requirement for hapū or iwi representation.[297]

[293] Woodley, at page 520.
[294] Woodley, at page 63.
[295] Woodley, at page 570.
[296] Woodley, at page 570.
[297] Woodley, at page 572.

(c) In 1899, a lack of title prevented Māori from voting and the government showed a lack of desire to change this system.[298] This included an inability to vote in local elections.[299]

(d) As a result of Māori being unable to vote, this excluded them from participating in local government, despite a clear desire from Māori to participate.[300]

(e) Furthermore, Māori living on the reserves were completely excluded from local government. Because they lived on a Reserve, they were exempt from rates, and only rate payers could be elected to local government.[301]

(f) Even where title was formalized, and title was in multiple ownership, only one person was entitled to vote, regardless of the number of owners on the title. [302]

(g) Despite Māori comprising 12% of the town, in the early 1900s, no Māori were elected to the Borough Council until 1956.[303]

(h) Those with more valuable land were effectively entitled to extra votes. The bias in favour of wealthy landowners tended to favour Pākehā and continued until 1974.[304]

(i) The number of Māori Councillors has always been disproportionate to the Māori population in the district.[305]

Inadequate Provision of Services

[298] Woodley, at page 572.
[299] Woodley, at page 569.
[300] Woodley, at page 571.
[301] Luiten part 1, at page 293.
[302] Woodley, at page 572.
[303] Woodley, at page 571.
[304] Woodley, at page 573.
[305] Woodley, at page 571.

(j) Services provided by Local Government to Māori communities is limited. Gravel roads are prevalent and there are no council provided water or sewerage systems.[306]

(k) Despite Māori land being rated on the basis of their use of Council services, Māori have been requesting Council services since as early as the 1930s and those services are still inadequate.[307]

(XIV) RESOURCE MANAGEMENT AND ENVIRONMENTAL ISSUES

93. The Crown failed to properly protect against the depletion and pollution of the lands, seas, harbours, lakes, waters, waterways (including groundwaters), environments, and resources of Ngai Tamahaua.

94. The Crown failed to properly provide for and recognize the intellectualand property rights to flora and fauna, foods, rongoā, and other taonga

within the lands and waters possessed and enjoyed by Ngai Tamahaua.

95. The Crown failed to properly recognize and provide for the customary title and rights of Ngai Tamahaua to their seas, harbours, rivers, lakes, and waterways (including their waters, groundwaters, and associated resources).

96. The Crown further failed to protect the physical and spiritual health of these seas, harbours, lakes, rivers, waters and waterways of Ngai Tamahaua.

97. The Crown has failed to recognise, protect, and provide for the customary rights, interests and associations of Ngai Tamahaua in their seas, harbours, lakes, rivers, and waters by enacting various legislation including the Resource Management Act 1991 and the Foreshore and Seabed Act 2004.

98. The Crown has also failed to recognise, protect, and provide for the customary rights, interests, and associations of Ngai Tamahaua by applying the Ad Medium Filum Aquae common law rule and/or byfailing to remedy any prejudice caused by the application of that common law rule.

[306] Woodley, at page 521.
[307] Woodley, at page 521.

99. The Crown has failed to properly recognise, protect, and provide for the ownership of Ngai Tamahaua in water.

100. The Crown has failed to properly recognise, protect, and provide for the ownership by Ngai Tamahaua of the other resources of the seas, harbours, rivers, waters, lakes, waterways, and groundwaters.

101. The Crown has failed to protect the interests of Ngai Tamahaua bythe compulsory taking of land on the banks and in the vicinity of the lakes, harbours, beaches, rivers, and waterways for reserves and other 'public purposes'.

102. The Crown has failed to adequately recognise and protect the wahi tapu of Ngai Tamahaua in and around the harbours, rivers, lakes, waterways, and other Ngai Tamahaua taonga.

103. The Crown has, through its Land Confiscation Acts, caused and permitted the total loss of communal tribal titles to the lands of Ngai Tamahaua including the sea-beds, harbour-beds, and river beds.

104. The Crown has, through its various Native Lands Acts, caused and permitted the fragmentation and individualisation of communal tribal titles to the lands of Ngai Tamahaua.

105. The Crown has through various statutes, policies, practices, and other instrumentalities, including in particular the Resource ManagementAct 1991 expropriated te tino rangatiratanga and management rights over the rivers, lakes, harbours, seas, waterways, and waters from NgaiTamahaua without their consent and, in so doing, has failed to adequately provide for or recognise their role as kaitiaki over these taonga.

106. The Crown has failed to adequately recognise, respect, or provide for the right of Ngai Tamahaua to development relating to their taonga.

107. The Crown has failed to adequately recognise, respect, provide, and protect the right of Ngai Tamahaua regarding further degradation and contamination of the waters of their rivers, lakes, harbours, seas and other waterways.

108. The Crown usurped Ngai Tamahaua te tino rangatiratanga over their lands, forests, fisheries, rivers, waters, waterways and other taonga within their customary lands and has failed to adequately provide foror recognize their role as kaitiaki over such rivers and waterways.

109. The Crown failed to adequately protect and provide for the exercise by Ngai Tamahaua of non-commercial customary fishing and the customary fisheries in their rivers and waterways.

Particulars

Physical Severing from Resources

(a) Not only were Māori severed from their cultivable lands through the confiscation, but all of the significant wetlands in the inquiry district, such as Kukumoa Swamp and those in the lower Waiōtahe River, were also taken by the Crown. What was left made it extremely hard for the harvesting of flax and duck hunting to continue.[308]

(b) In relation to the marine environment, at least 29km of coastline was taken by the Crown,[309] severing Te Whakatōhea's relationship to and ability to manage coastal resources.

(c) The Crown imposed restrictions on hunting, forcing Māori to be dependent on purchasing food from settlers rather than being self-sufficient as they were traditionally.[310]

Deforestation

(d) Early Pākeha settlors were permitted to burn and chop down large amounts of native forest.[311] The mass clearing of the native bush along

[308] Wai 1750, Dr Vaughan Wood, Dr Aroha Spinks, Dr Matthew Cunningham, Dr Tanja Rother, Moira Poutama, *Draft Environmental Issues Report*, CFRT, December 2023, at page 32.
[309] Wai 1750, Dr Vaughan Wood, Dr Aroha Spinks, Dr Matthew Cunningham, Dr Tanja Rother, Moira Poutama, *Draft Environmental Issues Report*, CFRT, December 2023, at page 381, at page 32.
[310] Spinks et al., at page 32.
[311] Spinks et al., at page 49-50.

the Waioweka River contributed hugely to the devastating floods in the area.[312]

(e) The Crown sold the valley flood plains for farming and thus contributed further to the floods which had devastating effects on local Māori. The floods also caused significant environmental changes within the waterways in the district.[313]

(f) Forests were heavily harvested to extract massive quantities of timber. Large amounts of Rimu and Kahikatea were harvested by Pākehā settlors on Crown confiscated land.[314]

(g) Settlors taking on farms in the Waioweka Gorge would burn off as much forest as possible each year to make way for farming.[315]

(h) Large amounts of native forest were cut down for the construction of roads.[316]

(i) The Crown failed to recognise that forests had any value other than when they were cut down.[317]

Gravel Extraction

(j) Between 1938 and 1948 there was extensive exploitation of gravel extraction from rivers in the inquiry district by the Crown.[318] Māori perspectives were consistently lacking despite being quite skilled in this before settlors came.[319]

(k) Māori were not given the same gravel excavation opportunities.[320]

[312] Spinks et al., at pages 39, 46 and 52.
[313] Spinks et al., at page 46.
[314] Spinks et al., at page 50.
[315] Spinks et al., at page 50.
[316] Spinks et al., at page 207-208.
[317] Spinks et al., at page 50.
[318] Spinks et al., at page 56.
[319] Spinks et al., at page 59.
[320] Spinks et al., at page 59.

(l) Māori's traditional use of gravel was regularly exploited by the Crown.[321] From the 1950's the Crown extracted gravel and sand from beaches around Tōrere and Omaio via the Public Works Act for roading purchase. In 1955 18 acres of Torere No. 2 was taken for a gravel pit. Māori were not able to practice their kaitiakitanga during this time.[322]

Discharge into Waterways

(m) In 1952, the Board of Health installed a new sewerage scheme (despite ratepayers' objection and experts concern) which involved sewerage sludge being pumped into the Waioweka River. The Council knew it would cause pollution and went ahead anyway.[323]

(n) After many issues with this sewerage system, a local gardener was permitted to take the dried sewerage sludge and use it to grow food to sell.[324]

(o) Despite concerns about the health of the Waioweka River and pollution, in 1955 the Ōpōtiki Hospital was opened, pumping their sewerage straight into the river.[325]

(p) Opotiki Bacon company were allowed to dispose their wastewater from their bacon curing process into the Waioweka River. At peak they disposed of 3-4,000 gallons of wastewater per hour.[326] This type of treatment of the Waioweka River and other rivers in the inquiry district, was common and caused serious pollution in the waterways.[327]

(q) Witnessing the destruction of waterways is extremely distressing to Māori, with impacts felt on a physical and spiritual level.[328]

[321] Spinks et al., at page 60.
[322] Spinks et al., at pages 59-60.
[323] Spinks et al., at pages 66-68.
[324] Spinks et al., at page 71.
[325] Spinks et al., at page 64.
[326] Spinks et al., at pages 65-66.
[327] Spinks et al., at page 65.
[328] Spinks et al., at page 63.

(r) At no point were Māori consulted or given the opportunity as Treaty partners to be decision makers about these processes.[329]

Shellfish Gathering

(s) The Waiotahe cockle and pipi population numbers plummeted from 2003 to 2005. Then after a short-rebound period, there were massive declines in 2020. This correlated with exposure to considerable faecal bacteria contamination from dairy run off.[330]

(t) Participants at various Environmental Issues wānanga describe the stench at Waiotahe Estuary as atrocious.[331]

(u) Brooklyn Farms were prosecuted 3 times in 3 years between 2010 and 2023 for discharging waste into waterway and compliance reports between 2018 and 2022 show "significant non-compliance", yet they continue to operate.[332]

(v) The thousands of farming cattle in the area have been contributing to high levels of bacterial loads in the Waioweka and Otara River for decades.[333]

(w) Reports of the Waiōtahe 2017 shellfish contamination event provide that rich native bush and an estuary bursting with kaimoana was now a patchwork of dairy farms that have polluted the sacred pipi beds with fecal bacteria and sediment from forestry and farming.[334]

Fisheries

(x) Three main Crown activities have decreased fisheries and decimated much of the traditional way of life of hapū and iwi in terms of fisheries in the waterways.

[329] Spinks et al., at page 71.
[330] Spinks et al., at page 76.
[331] Spinks et al., at page 76.
[332] Spinks et al., at pages 78-79.
[333] Spinks et al., at page 82.
[334] Spinks et al., at page 90.

i. Firstly, through large scale land confiscation and acquisition, whereby the Crown and European settlors controlled vast stretches of land alongside waterways, and therefore controlled access to them.

ii. Secondly, through the introduction of exotic fish species and failing to protect native species.

iii. Thirdly, through allowing the degradation of waterways, and allowing effluent leakage and unlimited intensification of agriculture.[335]

(y) Habitat loss for fisheries has occurred through the physical removal and modification of waterways, sewerage discharges, farming intensifications and water abstraction, and removing iwi and hapū access to waterways.[336]

Poor Management and Failure to Consult

(z) Crown resource management of water consisted of a regime that removed the naturally abundant life in favour of forestry, farming and horticulture industries and urban developments that are highly polluting.[337]

(aa) The Crown failed to value the advice and concerns raised by mana whenua which has led to a systematic failure to manage the highly polluting waterways.[338]

(bb) The purpose of river control mechanisms has been to protect the township and provide for expansion but has failed to protect Māori customary rights and interests.[339] Almost always, they have been undertaken without any consultation or involvement of Māori, and

[335] Spinks et al., at page 82.
[336] Spinks et al., at page 82.
[337] Spinks et al., at page 87.
[338] Spinks et al., at page 87.
[339] Spinks et al., at page 87.

have resulted in the destruction of mahinga kai, further taking of Māori land and erosion of culturally significant sites.[340]

(cc) The Crown has failed to protect the health of the waterways in the inquiry district which has had a huge impact on the use by whānau, hapū and iwi. The impacts of the degraded freshwater ecosystems have caused severe intergenerational trauma.[341]

(dd) The Resource Management Act appears to have contributed to degradation because significant impacts of sedimentation, nutrients and pathogen pollution of water quality are constantly being ignored.[342]

(ee) The Crown's freshwater management approaches have failed to protect ecosystem health and fish habitats. River ecosystems regularly pass tipping point and estuaries are under severe pressure with many fish nurseries lost.[343]

(ff) All of the public works to control the Waioweka and Ōtara River from flooding went ahead without any environmental impact assessment or consultation with iwi or hapū. Māori interests in the rivers and on the riverbanks (such as the site of Pākowhai, which had urban stop banking built over it) were completely ignored.[344]

(gg) In relation to irrigation schemes (including the Paerata Ridge irrigation scheme), there was no consultation with Māori or any individual or organisation representing Māori interests.[345]

(a) There was very minimal consultation with Māori on the gas pipeline from Ōpōtiki to Gisborne despite the route going through archaeological sites important to Māori.[346] The shortcomings of the lack of meaningful

[340] Spinks et al., at page 87.
[341] Spinks et al., at pages 93-94.
[342] Spinks et al., at page 93.
[343] Spinks et al., at page 93.
[344] Spinks et al., at page 237.
[345] Spinks et al., at page 244.
[346] Wai 1750, #A24, Alexander, David, *Scoping Report on Environmental Claims Issues*, c.1840 – 2010, CFRT, March 2022, at page 49.

consultation specifically with Māori about cultural concerns was illustrated by the route of the pipeline.[347]

(b) The Resource Management Act avoids individual iwi and hapū perspectives which is inconsistent with Te Tiriti.[348]

(c) "Conservation" land was always managed by government agencies, with no record of input from Māori. Māori therefore could not exercise their role of kaitiakitanga.[349]

(d) From the 1950's government agencies worked together to determine what to do with hill country lands. The clearance of forest on steep hillsides had exposed pumice-veneered, thin soils to erosion during high intensity rainstorms, with sediments clogging the lower reaches of the Waioweka River. The Department of Lands and NZ Forest divided up the land into their respective zones. There is no indication that these committees took into account Māori views.[350]

(e) In 1982, the Department of Lands produced a management plan for Waioeka Gorge Scenic Reserve. The plan involved no policies to include Māori except "to have regard for tribal wishes regarding the use of these sites". No record of consultation with Māori during the plan preparation, and the draft was never sent to any iwi. No submissions from hapū or iwi were received."[351]

(f) A longstanding feature of Crown policy was to develop Māori owned land so it was economically productive. Such developments impacted the environment. For example, a large part of Ōpape reserve was largely forested and not suitable for agricultural development so the native forest was removed and replaced with exotic forest to generate

[347] Spinks et al., at page 269.
[348] Alexander, at page 133.
[349] Alexander, at page 51-55.
[350] Alexander, at page 56.
[351] Alexander, at page 61.

income from the land, irrespective of the damage this might cause to the land over the long-term.[352]

(g) Waterways in the district have been modified by European developments.[353] Some waterways have dried out completely due to farming.[354] The implementation of Ad Medium Film Aquae has also had a detrimental effect on waterways.[355]

i. A 2017 report has identified 2 land drainage schemes supported by the Crown, to enable low-lying lands alongside waterways to be drained and brought into agricultural production at Waiotahe and Kukumoa.[356]

ii. In developing flood protections of the Waioeka and Otara rivers, there was no consultation with iwi and hapū.[357] There was also no consultation with iwi or hapū over the Motu river national water conservation order.[358]

iii. Flooding has severely increased in Waioweka and Ōtara due to forest clearance.[359]

iv. The Crown approach to waterways has largely been for a single-purpose (flood protection only) rather than multi-purpose or aimed at protecting the mauri of the rivers too.[360]

v. Iwi and hapū involvement is minimal despite having strong interests in seeing environmentally healthy rivers.[361]

(h) The clearance of native forest for farmland or for exotic forestry, and allowing the introduction of non-native animals and plants, has put the

[352] Alexander, at page 72.
[353] Alexander, at page 77.
[354] Alexander, at page 78.
[355] Alexander, at page 78.
[356] Alexander, at page 80.
[357] Alexander, at pages 83, 84 and 88.
[358] Alexander, at page 95.
[359] Alexander, at page 143.
[360] Alexander, at page 143.
[361] Alexander, at page 143.

remaining forest under considerable stress. Depleted forest is also not good at holding the land in place, meaning more soil erosion and more release of sediments into waterways, which results in more flooding.[362]

(i) Although various government plans have more recently recognised the role Māori have as kaitiaki, but it is not clear whether this has moved through into practice.[363]

(j) The Council attempt to involve iwi and hapū on an irregular basis, however, the time at which this involvement occurs is decided by Council, and usually feedback is only sought at particular stages set out in legislation. This does not foster a healthy relationship and causes frustration for Māori.[364]

(k) Consultation with iwi and hapū is based around Pākehā ideas of consultation and is at odds with Māori view.[365]

Taonga Species

(l) The Crown assumed the responsibility of caring for taonga species which it failed to do. Instead of protecting the interests of mana whenua, it prioritised the interests and values of settlers by extracting major resources such as taonga species from the area.[366]

(m) Taonga species have been significantly impacted by Crown management:

vi. Waioweka and Ōtara estuary are recorded as the largest area suitable habitat for īnanga spawning in the Bay of Plenty, but stock grazing on the spawning grounds has diminished production of whitebait.[367] Īnanga and their habitats are not getting the protection they need to thrive in the inquiry

[362] Alexander, at page 147.
[363] Alexander, at page 91.
[364] Alexander, at page 135.
[365] Alexander, at page 138.
[366] Spinks et al., at page 344.
[367] Alexander, at page 100.

district and the concerns of claimants are not being adequately addressed either.[368]

vii. Tuna (eels) have been hunted commercially since the 1960's.[369]

viii. Weka numbers are decreasing.[370]

ix. Kōkako are no longer present, although they still survive (albeit in decline) in Te Urewera. They were exterminated in the inquiry district by rat and possums.[371] If the same protection efforts that were enacted in Te Urewera were implemented within the Inquiry District, it is possible that Kōkako may still be abundant.[372]

x. In 1997, Whio were reported as endangered. Protection efforts for Whio did not include reference to the interests of Māori despite knowledge of their importance to Māori.[373] Information from 2023 indicated that Whio are no longer known to be living within the Inquiry District.[374]

xi. Pangokereia are one of the taonga species in the inquiry district that have been affected by early native deforestation, logging industry, sedimentation, roading, modification of stream beds, and introduced species.[375]

xii. Native species have mostly declined while the Crown assumed responsibility over their management, while many of the population declines took place on lands directly managed and administered by the Crown. Despite a variety of legislation, the Crown has largely been unable to provide the

[368] Spinks et al., at page 380.
[369] Alexander, at page 101.
[370] Alexander, at page 101.
[371] Alexander, at page 102.
[372] Spinks et al., at page 352.
[373] Spinks et al., at page 355.
[374] Spinks et al., at page 359.
[375] Spinks et al., at page 361-62.

protection or conservation over native species that is needed.[376]

Introduced Species

(n) Introduced species have also made a significant impact on the environment within the Inquiry District:

xiii. Many species were introduced into NZ with recreational, sporting or commercial harvesting intentions have all become pests to indigenous forests and land.[377]

xiv. Pigs, possums, red deer, goats, trout were among some.[378] Even land was reserved for "acclimatization" purposes[379]

xv. These species have caused significant damage to the native forests.[380]

xvi. Iwi and hapū were never consulted about whether they wanted them here or what to do once they were here.[381]

xvii. The Crown was directly involved and an active liberator of introducing these species into NZ without any consultation with Māori.[382] Legislation was enacted to provide for introducing species to the inquiry district.

xviii. It is a race against time to control and ideally remove the introduced animals and plants present in native forest lands so as to give these forests the best chance of survival.[383]

Ōhiwa Harbour

[376] Alexander, at page 102.
[377] Alexander, at page 104.
[378] Alexander, at page 104-116.
[379] Alexander, at page 114.
[380] Alexander, at page 110.
[381] Alexander, at page 104.
[382] Alexander, at page 115.
[383] Alexander, at page 147.

(o) Prior to Crown management, the Ōhiwa harbour was pristine and had spiritual and cultural significance to Whakatōhea, including Ngai Tamahaua.[384]

(p) Māori gained health and wellbeing on physical and spiritual levels feeding and gathering from the abundant nourishing populations of seafood within the harbour. Māori gathered pipi, cockles, mussels, oysters, fish, shark, and sting rays during summer and stored some as winter foods. [385]

(q) After the Crown Raupatu confiscation mana whenua were dispossessed of most of their lands including the Ōhiwa harbour and islands within.[386]

(r) In the 1960s, the Ōhope sewage disposal system proposes discharging human effluent into the Ōhiwa harbour waters causing major concerns to local hapū, iwi, other residents, and councils.[387]

(s) An extract from a report prepared in 1963 on the commercial and recreational use of Ōhiwa harbour notably had no reference to cultural use.[388] When considering the use of the harbour for effluent disposal, focus was on tourist attraction rather than Māori customary interests or kaitiakitanga.[389]

(t) There was an increased growth of mangroves by 442% over 47 years, loss of 88% of wetlands since 1840. This resulted in a significant reduction in the range of fish, shellfish and bird species has been identified, some of which have been replaced by other less desirable exotic species.[390]

(u) Increased gathering pressure on mussel beds had resulted in mana whenua placing a rāhui still in place up to the date of a report on the

[384]Spinks et al., at page 273.
[385] Spinks et al., at page 289.
[386] Spinks et al., at page 286.
[387] Spinks et al., at page 296.
[388] Spinks et al., at page 297.
[389] Spinks et al., at page 298.
[390] Spinks et al., at page 334.

health of the harbor. The report showed poor health and an ecosystem out of balance due to human induced pressures and insufficient Crown and local body management.[391]

(v) A 1966 report on shellfish in the harbour reported high stocks of mussels, oysters and cockles. However, it noted that depletion in shellfish numbers was due to over-exploitation and siltation caused by the burning of native bush and farming efforts in late 1800s to early 1900s. The Crown was therefore not effective at protecting abundance of kaimoana at least up to 1960s.[392]

(w) Ōhiwa harbour featured as having the lowest estimated cockle populations in 2016 and 2021 and the lowest estimated pipi population in 2021 out of the seven harbours investigated in the northern North Island region.[393]

Ōpōtiki Marina Development

(x) In 2006, Ōpōtiki District Council commissioned DHI Environment and Water Ltd to model and design an entrance channel which would provide sufficient depth for the harbour to be uses all year round.[394]

(y) 2009, the commissioners recommended to minister of conservation that access be granted and noted approval from one individual as showing Whakatōhea supported it and there were no sites of cultural significance or other taonga that would be impacted. This was granted in August 2009.[395]

(z) When plan was put to submissions, Ngai Tamahaua submitted that the development should not be approved until the new harbour entrance had progressed and called for ecological and cultural buffers to be vested in the hapū.[396] Ngai Tamahaua made further submissions

[391] Spinks et al., at page 311.
[392] Spinks et al., at page 329.
[393] Spinks et al., at page 336.
[394] Spinks et al., at page 420.
[395] Spinks et al., at page 422.
[396] Spinks et al., at page 423.

opposing the applications for consents in 2022.[397] Submissions made reflected the following points:

xix. That wāhi tapu were not sufficiently protected;

xx. That consultation with Ngai Tamahaua had been inadequate;

xxi. That no recognition was given to the Customary Marine Title and Customary Rights that were provisionally granted to Ngai Tamahaua;

xxii. That Ngai Tamahaua was not involved in the assessment of cultural values;

xxiii. That the application did not have sufficient regard for the importance of water quality and failed to properly consider the liquefaction risk posed by depositing large quantities of harbour dredgings on the site.[398]

(aa) Despite these submissions, the Officer's report on the proposed consents provisionally recommended that the proposed consents be granted, subject to cultural effects being avoided, remedied or mitigated.[399]

(XV) MANGATŪ AND WAIPAOA BLOCKS

110. The Crown has failed to recognise and provide for Ngai Tamahaua customary interests in the Mangatū and Waipaoa blocks, including the area that is today encompasses the Crown Forest Licensed Lands.

111. Ngai Tamahaua oral and traditional histories illustrate that they have customary interests in the Mangatū and Waipaoa blocks, including the Crown forest lands, by virtue of the following:

[397] Spinks et al., at page 426.
[398] Ngāi Tamahaua Hapū Working Group, 'Submission', pp. 1-2, & 'Memorandum of Understanding Ngāi Tamahaua hapū and the directors of Ōpōtiki Marina and Industrial Park', pp. 4-5, in 'Resource Consent Hearing. Ōpōtiki Marina and Industrial Park Limited'. (referenced in Spinks et al., at pages 427-429.).
[399] Spinks et al., at page 432.

(a) Whakapapa from the tipuna Paoa from Horouta. Paoa travelled from Ohiwa to Maungahaumi. The name Manugahaumi comes from the overland expedition of Paoa[400] which Ngai Tahamahau say commenced at the Ohiwa Harbour. The name haumi refers to the rakau which Paoa found at Maungahaumi and which was used to repair his damaged waka.

(b) It was the mimi of Paoa which created the Waipaoa, Waikohu, Motu and Waioweka awa.

(c) Intermarriages extended across the Mangatū Waipaoa area, linking it into Whakatōhea and other surrounding groups.[401]

i. The whakatauki "ka mate kainga tahi, ka ora kainga rua" highlights the intermarriages between iwi, particularly the iwi of Tūranga and Whakatōheā. These intermarriages provided the insurance of protection from one iwi to another in times of conflict.

ii. Tūtāmure's sister, Tāneroa married Tūtātai, who belonged to the Ngāti Kahungungu people at Māhia. [402] Tūtamure travelled to Kahungungu to avenge his sister's death. [403] Kahungungu made peace with Tūtāmure's taua by sending his daughter Tauhei as a peace offering. Tūtāmure allowed Tuahei to marry his younger brother, however, in doing so, Tūtāmure exiled his brother telling him he would never again gaze upon the vapours emanating from Whkaari. [404] Tūtāmure ordered his brother to remain on the Tūranga side of the divide at Mōtū.[405]

iii. Whakatōhea whānau own sacred taonga which were gifted from Te Aitanga a Mahaki and which symbolise the relationship between the two peoples.

[400] The Mangatū Remedies Report, at page 83, para 45
[401] The Turanga Tribunal referred to the connections and common ancestors that exist between Turanga hapū and their wider neighbours, Ngati Porou and Te Aitanga a Hauiti in the east, Te Whanau a Apanui and Whakatōhea in the north, and descendants of Kahungunu in the south and east (Wai 894 Report, at page 21).
[402] Walker, Ōpōtiki-Mai-Tawhiti, at page 21.
[403] Walker, at page 22.
[404] Walker, at page 23.
[405] Walker, at page 23.

(d) The traditional area of the Ngai Tu federation extended to include the area that is now the Mangatū State Forest:

i. Tamahaua was a descendant of Tārawa who was the founding ancestor of the Ngai Tu federation. Ngai Tamahaua are, therefore, inherently connected to the mana whenua of the Mangatū and Waipaoa forest lands.

ii. The 'foot print of Tārawa' as his rohe is known, takes in the area that incorporates the Mangatū Crown Forest.[406]

(e) Ngai Tamahaua were present at the Crown attack on Waerenga a Hika:

i. The attack on this Pā site was an assertion of Crown military power which occurred on 17 November 1865.

ii. Among those present at the attack were Pai Marire Māori who had travelled from Ōpōtiki in March of that same year and who provided support for those being attacked.[407]

(f) Te Kooti:

i. In January 1869 Te Kooti Arikirangi arrived in the Waioeka area.[408] Ngai Tamahaua converted to the Ringatu faith.

ii. Ngai Tama were one of the of groups that supported Te Kooti as he took refuge in the Waioeka Gorge at Maraetahi, near Oponae around this time.[409]

iii. On the south-east boundary of the 'Mangatu State Forest', lies the peak of Areoma where the Ōtūhawaiki Pā was located. This was the site of a significant battle involving Whakatōhea.[410]

[406] Reference to Heteraka Biddle evidence on Te Tapuwae ō Tārawa.
[407] Waitangi Tribunal Turanga Tangata Turanga Whenua Report, volume 1, page 112.
[408] https://teara.govt.nz/en/biographies/2t25/te-popo-hira
[409] Ibid.
[410] A Pātete describes an incursion of Whakatōhea who were moving into the Raukūmara area, possibly to escape the depredations of musket armed Ngāpuhi, or, in another version, Whakatōhea were raiding and had scouted the Ngāriki settlement at Urukokomuka but Ngāriki had cottoned onto their intent and escaped to Areoma, Wai 1489 #A022, Wai 814, #A22, A Patete, Ngā Ariki Kaipūtahi and the Mangatū Lands, at pages 18-19.

112. The nature of Ngai Tamahua rights to the Mangatū / Waipaoa rohe includes:

(a) Mahinga kai such as the use of 'kereru reserves';

(b) Harvesting of 'para' or kōkopu on lands in the 'Mangatū rohe';

(c) The right to hunt and fish on the land or in the waters; and

(d) The right to take natural resources from the land and waters. Arising from the ancient and enduring relationships that span the motu between Te Whakatōhea and Tairawhiti.

113. The Native Land Court awards in the Mangatū block were found by the Turanga Tribunal to be unsafe, therefore, the absence of Whakatōheā names on the Māori Land Court awards for the Mangatū blocks should not be taken as an indication that Whakatōheā did not hold customary interests in this area.[411]

D. TE MAMAE- THE PREJUDICE

7. As a consequence of the Crown's breaches as set out in this Statement of Claim, Ngai Tamahaua has suffered and continues to suffer various prejudicial effects including:

(a) The rapid alienation of almost all of their land base leaving them virtually landless within their rohe;

(b) The loss of mana and rangātiratanga and a consequential loss of economic, cultural and political autonomy;

(c) The loss of or damage to the complex customary systems of landtenure and resource rights;

(d) The marginalization of Ngai Tamah aua within their own ancestral lands;

(e) The loss of Ngai Tamahaua life and property;

[411] Wai 814 Report, at 693.

(f) The disintegration and decay of Ngai Tamahaua chiefly andtribal authority;

(g) The damage and desecration of tribal wāhi tapu and taonga;

(h) The loss of customary fisheries and waterways, and access to customary knowledge of such fisheries and waterways;

(i) The loss of knowledge of, or vastly reduced practice of,customary religious practices and tikanga;

(j) The reduction of the use of te reo Māori as a first language andthe knowledge of tribal dialects; and,

(k) The impairment of, or damage to, the spirit, wairua, mana, and ihi of the hapū and its members.

E. TE UTU- THE RELIEF

Remedies Sought

8. That the prejudice as aforesaid was and remains such that Ngai Tamahaua are entitled to immediate and substantial reparations such as to restore the mana and economic base of the Ngai Tamahaua people.

9. The Claimants therefore request the Waitangi Tribunal to seek to help remove and diminish the prejudice suffered by making findings that the Crown has breached the principles of the Treaty of Waitangi as set out in this Statement of Claim and recommendations seeking:

(a) The full restoration of the mana of Ngai Tamahaua over their customary tribal lands and the recognition of Ngai Tamahaua customary associations and interests with their lands;

(b) The return to Ngai Tamahaua of all Crown lands including Department of Conservation and Conservation Stewardship lands within their customary tribal lands;

(c) Pursuant to sections 8A to 8HJ of the Treaty of Waitangi Act 1975 the return to Ngai Tamahaua of all State-owned Enterprise lands within

their customary tribal territory, includingany former State-enterprise land, subject to Section 27B of the State-Owned Enterprises Act 1986;

(d) Pursuant to sections 8A to 8HJ of the Treaty of Waitangi Act 1975 the return to Ngai Tamahaua of all lands held by institutions under the Education Act 1989 within their customarytribal territory, including any such land no longer held by institutions but subject to Section 27B of the State-Owned Enterprises Act 1986;

(e) Pursuant to sections 8A to 8HJ of the Treaty of Waitangi Act 1975 the return to Ngai Tamahaua of all lands vested under the New Zealand Railway Incorporation Restructuring Act 1989 within their customary tribal territory, or any interest in such land together with any improvements thereon;

(f) The return to Ngai Tamahaua of all Crown Forest assets within the region of the Ngai Tamahaua claims (so that there can be a payment to Ngai Tamahaua of undispersed rentals held by the Crown Forestry Rental Trust pursuant to their Trust Deed); and the payment to Ngai Tamahaua of the maximum level of compensation payable by virtue of the provisions of the First Schedule of the Crown Forest Assets Act 1989;

(g) The immediate recognition of Ngai Tamahaua ownership of all rivers, lakes, waterways, minerals, waters and ground-waters, and other resources currently claimed by the Crown within the Ngai Tamahaua rohe;

(h) An immediate apology by, and on behalf of, the Crown and its agents;

(i) Full and comprehensive monetary reparation;

(j) Costs; and,

(k) Such other relief as the Tribunal deems appropriate.

Dated at Auckland this 23rd day of January 2024

Coral Linstead-Panoho / Raewyn Clark / Josi Witehira / Solita Turner

Counsel for the Claimants