

BEFORE THE WAITANGI TRIBUNAL

WAI 1750
WAI 1782

IN THE MATTER OF

the Treaty of Waitangi Act
1975

AND

IN THE MATTER OF

claims relating to the North-
Eastern Bay of Plenty
Inquiry District (WAI 1750)

AND

IN THE MATTER OF

a claim by **Te Riaki
Amoamo** and **Mereaira
Hata** for and on behalf of
Ngāti Ruatākenga (Wai
1782)STATEMENT OF CLAIM
Dated this 18th day of March 2024ANNETTE
SYKES & Co.
barristers & solicitors

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**E hika mā
E ako koe ko wai koe? Nō hea koe?
Āpōpō ka manene i te whenua**

Tiwai Amoamo, kaumatua of Ngāti Rua, 1990.

KŌRERO TĪMATANGA

1. This Statement of Claim is filed by the claimants Dr Te Riaki Amoamo and Mereaira Hata for and on behalf of Ngāti Ruatākenga (Wai 1782).

KO NGĀ KAITONO - THE CLAIMANTS

2. Ngāti Ruatākenga (commonly known as **Ngāti Rua**) are a hapū of Te Whakatōhea named after their eponymous ancestor Ruatakenga. Their ancestors have lived in the Ōpōtiki area since the arrival of their ancestor Tautūrangi on the Nukutere waka a millennium ago. Tautūrangi and his people became known as Te Wakanui.
3. The Ngāti Rua whakapapa mingles the blood streams of the tīpuna from the Nukutere waka, and the Mataatua waka that arrived eight generations later. The illustrious ancestor Tūtāmure, the son of Hanenepounamu from the Nukutere waka, married Hine-ī-kauia, the daughter of Muriwai from the Mataatua waka. During the lifetime of Tūtāmure the people became known as Te Panenehu.
4. There is also a Mataatua connection through Rēpanga, the first son of Muriwai, and it is from this line that the eponymous ancestor Ruatākenga descends. In time the people became known as Ngāti Ruatākenga.
5. Today, Ngāti Rua are the largest hapū of Te Whakatōhea iwi, with 4348 Ngāti Rua members registered with the Whakatōhea Māori Trust Board as at 2020.
6. Ngāti Rua are a hapū who adhere to the Ringatū faith. This faith stems from their relationship with Te Kooti Arikirangi Te Tūruki, who arrived in the rohe of Te Whakatōhea in the 1860s. Many Ngāti Rua converted to the Ringatū faith, attracted by Te Kooti's message of justice and salvation. At

that time, the Crown's demonisation of Te Kooti attached stigma to his followers.

7. The Ngāti Rua marae, Ōmarumutu Marae, is the heart of the hapū. Ōmarumutu Marae is approximately 12km east of Ōpōtiki township.
8. The heke at Ōmarumutu Marae have paintings depicting the Crown's pursuit of Te Kooti, reflecting Ngāti Rua's commitment to the Ringatū faith to this day.

TE ROHE - THE CLAIM AREA

9. The boundaries of Ngāti Rua are outlined by the Pou Tikanga o Ngāti Rua, Dr Te Riaki Amoamo.

Starting at the sea, at the river mouth of the Waiaua river. The river mouth of the Waiaua river is Te Awahou, which follows the sea towards the west, crosses over the stream of Tirohanga, crossing to arrive to Te Kukuwai, climbing to Pākihikura to the entrance of the waters that connect to the harbour to Ōpōtiki; the Waioweka river and the Otara river. These are the boundaries of Ngāti Ruatakenga on the western side of Ōpōtiki.

The Ōtara river is the boundary. On the other side is Ngāi Tū. Following the boundaries of Ngāti Ruatakenga from Pākihikura to where Ōtara and Waioweka join. The source of the river of Ōtara heading inland to where the two streams Te Waiti and Pākihi meet.

In between Pākihi and Te Waiti is an ancient Māori trail path called Kōwhai, which takes you into the Gisborne District. Continuing on, following the boundary of Ngāti Ruatakenga along the river of Pākihi to its source. This spring of water is not far from Motuhora and Whakapaupākihi. The name of Pākihikura comes from a canoe that arrived at Ōpōtiki. The river was named Pākihikura which is carried on through to the name of Whakapaupākihi.

From Motuhora, you turn towards Whakapaupākihi, heading east to see the river of Motu. This river starts at Maungatapere. In Whakapaupākihi, which is within the boundaries of Ngāti Ruatakenga, go towards Tāngakākārīki, from Tāngakākārīki to Kaitaura. From Kaitaura, going along the river of Motu, you arrive at Peketūtū, from Peketūtū, leave the river of Motu to climb the mountain of Raukūmara, to arrive on top of Whakarāonga.

The boundaries of Ngāti Rua is still sectioned and defined from Whakarāonga to Otīpi. From Otīpi to Makomako, from Makomako, cross the river of Takapūtahi you ascend towards Ūpokotangata. From Ūpokotangata continue on to Tāpokere, from Tāpokere to Te Atua a Hautapu. From Te Atua a Hautapu, go straight towards

Tarakeha – arriving at the sea. From Tarakeha, go westward to the standing rocks at Ōpape, to Kōtukutuku. From Kōtukutuku to Paengatoitoi. From Paengatoitoi to Te Awahou. These are the boundaries of Ngāti Ruatakenga in the hinterland.

Te Rangi is a sacred site as it marks the day the Nukutere arrived in Aotearoa, New Zealand. Beginning there and heading westward to Tarakeha. From Tarakeha, we come around the headland to Kōtukutuku (the name comes from the tree that grows along the coast). Kōtukutuku is the main sea channel through the rocks at Ōpape, this is where the Nukutere came through, but it is also the name for the place on the land where Tautūrangi disembarked from the canoe.

The Ōpape stream exits to the sea at the western base of Ōpape headland amongst the rocks near Taiharuru.

In-between Ōpape and Ōmarumutu, on the western side of Ōpape, is Te Paenga Toitoi (meaning the toitoi shellfish cast ashore by the high tide – there is a bed of toitoi out to sea and they end up on the beach). There was a battle here where Whakatōhea was defeated by Ngāti Maru.

Heading westward following the shoreline, in the distance is Waiaua River mouth entering the sea at Te Awahou (previously, Ōpape). The source of the river is Te Kaingapupū in the forested highlands at the base of the Weraakauanga Range.

Heading westward from the Waiaua River is the Tirohanga Stream. Its source commences in the Tirohanga Valley, and its exit to the sea terminates at the base of the Tirohanga headland. Hanaia is a ridge near Tirohanga. There are rocks at Tirohanga where you can get mussels, but the kaimoana here is not as plentiful as at Ōpape.

Our western coastal boundary is located on the eastern bank of the Pākihikura River (and heading inland boundary follows eastern bank of the Ōtara River right to its source). Pākihikura is the estuary formed at the confluence of the Waioweka and Ōtara Rivers on the coast at Ōpōtiki. The river is shown on the cadastral maps as Waioweka River going right to the sea, but that is incorrect – in the ancient kōrero the proper name is Pākihikura (also known as Pākihi) from the juncture of the two rivers to the sea.

The name comes from the Pākihikura waka that made its landfall at Ōpōtiki in ancient times. Pākihikura is home to a taniwha named Whanaunga-kore (the taniwha with no relations). Pākihikura was an important food pantry for our people, and hence the pā Pākōwhai was built on its shores and hosted a large settlement. There is a Ngāti Rua urupā, Pākihi, on the coast at the sand dunes, this was one was used during Christianity.

Heading out to sea now, the fishing grounds in our customary rohe moana are Hāmama, Paerata, Te Hira, Whitau, Perapera, Hamamatua, Te Paru o Rangi, Taupiki, Hamamatuhou and Matawiwi Tauatoru.

All Whakatōhea hapū have a connection with Whakaari, as it is part of our customary seascape area. Paepae Aotea are the rocks next to Whakaari and are regarded as the spiritual farewelling for the dead within the Mātaatua region.

NGĀ HARA O TE KARAUNA | CAUSES OF ACTION

A. POLITICAL AND CONSTITUTIONAL ISSUES

I Ko Te Take Tuatahi: Failure To Respect Te Tino Rangatiratanga Of Ngāti Rua

10. Ngāti Rua have always held and continue to hold mana whakahaere and tino rangatiratanga (authority and control) over their rohe, including their whenua, moana, awa, wāhi tapu and taonga. Ngāti Rua have always held this mana collectively as whānau and hapū.
11. Ngāti Rua tino rangatiratanga was exercised by rangatira who held the mana to do so by virtue of the collective support of their people.
12. Te Whakatōhea signed Te Tiriti o Waitangi on the 27th and 28th of May 1840. The two signatories for Ngāti Rua were Rangimātānuku and Te Āporotanga. These two rangatira signed Te Tiriti in good faith to ensure the rights of Ngāti Rua would be protected. In total, there were 7 chiefs of Te Whakatōhea who signed Te Tiriti. The remainder were: Tauatoru, Whātui, Whākia, Tākahi, Ake and Rangihaerepō.
13. Ngāti Rua understood that under Te Tiriti:
 - (a) Ngāti Rua would retain their mana and tino rangatiratanga over their rohe, whenua, awa, wāhi tapu, taonga, whānau and hapū;
 - (b) the Crown were granted kāwanatanga to govern settlers under British law; and
 - (c) Māori and the Crown would work together as partners for the prosperity of all.

Te Tiriti Breaches

14. The Crown overextended the kāwanatanga authority granted under Te Tiriti by unilaterally asserting its sovereignty over all peoples in Aotearoa New Zealand, to the detriment of Ngāti Rua governance and law/tikanga.
15. In gross breach of Article 2 of Te Tiriti, the Crown failed to recognise and respect the mana whakahaere and tino rangatiratanga of Ngāti Rua by purporting to impose Crown authority over the people and rohe of Ngāti Rua, including:
 - (a) Failing to recognise the authority of Ngāti Rua rangatira on a nation to nation basis;
 - (b) Invading and waging war against Ngāti Rua;
 - (c) Confiscating Ngāti Rua land;
 - (d) Implementing central and local government entities that purported to exercise authority over Ngāti Rua lands and people;
 - (e) Usurping Ngāti Rua authority over the environment through the implementation of environmental and resource management legislation;
 - (f) Implementing Crown-defined political institutions for the exercise of Te Whakatōhea authority in lieu of the proper recognition of Ngāti Rua tikanga based institutions.

Specific Prejudice

16. This overextension of Crown authority has impacted every aspect of Ngāti Rua life, including by:
 - (a) Damaging the cultural, political and spiritual wellbeing of Ngāti Rua;
 - (b) Leading to the loss of economic independence and prosperity;
 - (c) Disconnecting Ngāti Rua from their traditional cultural and spiritual practices, taonga and laws;

- (d) Damaging the natural environment of Ngāti Rua and its abundance of natural resources;
- (e) Arousing division and conflict between the people of Ngāti Rua and the neighbouring hapū of Te Whakatōhea through the erosion of rangatiratanga and tikanga as traditional relational frameworks.

II Ko Te Take Tuarua: Failure To Recognise And Protect Mana Ā-Hapū

- 17. Since 1840, the Crown has consistently promoted a policy of dealing with Te Whakatōhea at an iwi-wide level, and has failed to recognise the hapū-centric tikanga within Te Whakatōhea.
- 18. For example, the Crown adopted a policy of dealing with the Te Whakatōhea Māori Trust Board as the primary representative of Te Whakatōhea to receive compensation for the raupatu and to negotiate with the Crown.
- 19. The Crown also adopted a policy of undertaking settlement negotiations for historical Treaty claims at an iwi level rather than with each hapū of Te Whakatōhea, even though it was the hapū who held customary title to the land and other taonga within their rohe.
- 20. The Crown has not recognised or resourced the hapū of Te Whakatōhea, including Ngāti Rua, to engage in relationship building with the Crown as Treaty partners.
- 21. These policies excluded the mana whakahaere and traditional leadership of hapū, including Ngāti Rua, from the relationship with the Crown in a manner that failed to respect the tikanga within Te Whakatōhea of mana ā-hapū as the primary political unit and fostered internal division amongst the hapū of Te Whakatōhea.

Te Tiriti Breaches

- 22. The Crown, in breach of Article Two of Te Tiriti and the principle of active protection, has consistently failed to respect the tikanga of hapū rangatiratanga within Te Whakatōhea and failed to appropriately recognise the mana ā-hapū of Ngāti Rua.

23. The Crown, in breach of the Treaty principle of redress, has failed to provide adequate and timely redress for Ngāti Rua and the hapū of Te Whakatōhea by adopting settlement policies that have caused internal division and not addressed Ngāti Rua's grievances.

Specific Prejudice

24. The Crown's breaches have prejudiced Ngāti Rua by undermining their tikanga and exercise of tino rangatiratanga over their lands and people, which is central to their existence as a collective. This erosion of rangatiratanga damages the cultural, spiritual and economic base of Ngāti Rua.
25. Ngāti Rua is further prejudiced by exclusion from building a direct political relationship with the Crown to pursue their own aspirations with their Treaty partner, consistently with their mana motuhake.

III Ko Te Take Tuatoru: Local Government

26. Multiple local government bodies were established with authority over the rohe of Ngāti Rua.
27. These bodies include the Ōpōtiki Highway/Road Board and Town of Ōpōtiki Highway Board (established 1871), the Whakatāne Highway/Road Board and Whakatāne County Council (established 1876), the Ōpōtiki Town Board (established in 1882), the Ōpōtiki County Council (established 1899) the Ōpōtiki Borough Council (established in 1911) and the Ōpōtiki District Council (established in 1986).
28. These bodies exercised powers in a way that discriminated against Māori, including the rating of Māori land, and that were inconsistent with the limited authority Te Tiriti o Waitangi granted to the Crown to exercise authority over its own settlers.
29. There was no Māori representation on any of these local government bodies until 1923, and consistent Māori representation did not occur until 1941 onwards. Even then, Māori representation on local government bodies has been vastly disproportionate to the tangata whenua population in the region.

30. Māori representation on local government bodies in the region was hampered by the voting structure for the election of local government. Until 1944, only ratepayers named as occupiers on a county valuation roll were eligible to vote.
31. This resulted in the practical disenfranchisement of Māori in the rohe due to the way Māori land was rated, the lack of title over land allocated to Māori following Crown confiscations, the inability of some Māori occupiers to pay rates and the failure to take the multiple ownership of Māori land into account.
32. The low numbers of Māori eligible to vote in the rohe made it practically difficult for Māori to be elected to these bodies.
33. The Crown has not implemented legislation that made provision for iwi or hapū representation within local government.
34. This meant that to the extent there was any Māori representation on local government entities, that representation was on an individual basis and did not provide for or recognise the mana ā-hapū of Ngāti Rua in their customary rohe.

Te Tiriti Breaches

35. The Crown breached Article One and Article Two of Te Tiriti by establishing local government in the North Eastern Bay of Plenty in a manner that purported to extend its kāwanatanga authority over Ngāti Rua and undermined the ability of Ngāti Rua to exercise their tino rangatiratanga in their rohe.
36. In breach of Article Two of Te Tiriti, the Crown failed to ensure that local authorities established a relationship with Ngāti Rua to appropriately recognise the rangatiratanga and kaitiakitanga of Ngāti Rua in their district.

37. In breach of Article Three of Te Tiriti, the Crown failed to provide effective mechanisms to ensure the full representation of Ngāti Rua in local government.

Specific Prejudice

38. The Crown's breaches prejudiced Ngāti Rua by undermining Ngāti Rua's exercise of rangatiratanga in their rohe, thereby eroding their political authority and cultural autonomy.
39. Ngāti Rua have also been prejudiced by their kaitiakitanga obligations to protect and care for their whenua and sites of significance not being properly provided when development takes place in the district.

B. ISSUES OF WARFARE AND RAUPATU

IV Ko Te Take Tuawhā: Invasion

40. Between 1860-63, Crown forces were engaged in warfare with iwi in Taranaki and the Waikato. Prior to late 1863, hapū of Te Whakatōhea observed but did not engage in this conflict. In late 1863, Te Whakatōhea considered whether to provide support to Kīngitanga leaders resisting Crown forces following the Crown invasion of the Waikato in mid-1863.
41. In January 1864, Te Whakatōhea rangatira pledged military support to the Kīngitanga movement and toa from hapū of Te Whakatōhea joined a Tairāwhiti taua heading to Waikato. The taua was ambushed by Te Arawa forces at Rotoiti and retreated to Ōpōtiki to strategize how to pass through to Waikato to support the Kīngitanga. The taua travelled via the coast road and arrived to Matatā when they were ambushed again. This was called the battle of Te Kaokaoroa and several important rangatira were killed, including Ngāti Rua leader Te Āporotanga, as Crown forces sought to push back the Tairāwhiti taua.
42. In late 1864, Kereopa Te Rau and Patara Raukauri arrived in the rohe of Whakatōhea with a contingent of followers, as emissaries of the Pai Mārire faith established by Te Ua Haumene. Many within Te Whakatōhea converted to the faith.

43. The Pai Mārire adherents believed that Carl Sylvius Volkner, an Anglican missionary resident in the Whakatōhea rohe, was a government informant and viewed him with hostility. On 2 March 1865, Volkner was killed by Pai Mārire adherents, led by Kereopa Te Rau.
44. The Crown became concerned that the killings and the ongoing disruption caused by the Pai Mārire presence in the Bay of Plenty could spread dissent amongst otherwise 'loyal' groups of Māori.
45. In response, on 5 September 1865, Governor George Grey issued a "Proclamation of Peace". The proclamation declared an end to the Taranaki and Waikato wars and granted amnesty to Māori who had previously taken up arms against the Crown. However the amnesty did not extend to those responsible for the death of Carl Volkner. The proclamation announced the Crown's intention to dispatch troops to Ōpōtiki to apprehend those responsible for Volkner's death. The proclamation further said that if those responsible were not given up to Crown authorities, the land of tribes protecting them would be confiscated.
46. A second proclamation on 5 September 1865 declared martial law in the areas of Ōpōtiki and Whakatāne.
47. Three days later, on 8 September 1865, Crown forces invaded Ōpōtiki. News of Governor Grey's proclamations had not reached the people of Te Whakatōhea prior to the invasion beginning.
48. The entry of Crown troops into the Te Whakatōhea rohe resulted in military engagements between the Crown and Te Whakatōhea at several points around Ōpōtiki, Pākōwhai and Kohipaua Pā resulting in casualties to Whakatōhea. Many Ngāti Rua were living at Pākōwhai and Kohipaua Pā at the time. The Te Whakatōhea defenders subsequently retreated into bushlands.
49. Following the Te Whakatōhea retreat inwards, Crown troops adopted a scorched earth policy, destroying the villages, resources and taonga in the Ōpōtiki area. The Crown also took control of Whakatōhea infrastructure

including ships roads and bridges, and looted and sold Whakatōhea horses, cattle and machinery, including those belonging to Ngāti Rua.

50. Further fighting occurred at Te Tarata Pā resulting in additional Whakatōhea casualties, who were buried by Crown forces in a mass grave in the trenches of the pā.
51. Many Te Whakatōhea who had fled into the bushlands, including Ngāti Rua, eventually surrendered to Crown forces in October 1865. Subsequently, Te Whakatōhea rangatira Mokomoko was apprehended and wrongfully convicted and sentenced to death for the killing of Volkner.
52. Te Whakatōhea suffered at least 60 dead and unknown number of wounded in the invasion. This was a fatality rate representing around 10% of the Te Whakatōhea population.

Te Tiriti breaches

53. Without lawful excuse and in gross breach of its obligations under Te Tiriti, the Crown waged war against the hapū of Te Whakatōhea, including Ngāti Rua, by seeking to conquer the Kīngitanga, and by subsequently invading the rohe of Te Whakatōhea, seeking actively to defeat their te tino rangatiratanga by military force.

Specific Prejudice

54. The invasion and subsequent warfare resulted in:
 - (a) The death and injury of Te Whakatōhea people;
 - (b) The plundering and destruction of Ngāti Rua lands and property;
 - (c) The undermining of the tino rangatiratanga of Ngāti Rua over their rohe;
 - (d) Social, economic and political loss with ongoing effects for Ngāti Rua through the 19th and 20th centuries into the present day.

V Te Take Tuarima: Te Rau O Te Patu

55. The New Zealand Settlements Act 1863 (the **Settlements Act**) legislated for the confiscation of land from Māori deemed to be “engaged in open rebellion against Her Majesty’s authority”. Its ostensible purpose was to keep the peace by placing military settlers on confiscated tribal land.
56. Following the invasion, in January 1866, 448,000 acres of land in the Bay of Plenty was confiscated under the Settlements Act, including Ngāti Rua land. 118,300 acres of land were then returned to ‘loyal’ Māori and an additional 112,300 acres to formerly ‘rebel’ Māori who had submitted to the Crown’s authority. This left a remaining 211,060 acres in Crown title, including 144,000 acres of land belonging to the hapū of Te Whakatōhea.
57. The Crown decided that Te Whakatōhea were in rebellion with no investigation into the role, if any, that Te Whakatōhea people played in the death of Volkner, and notwithstanding the fact that the crime of murder was not an act of rebellion. The entire iwi was blamed and faced collective punishment for the death of one man at the hands of outsiders.
58. The confiscated land included all Te Whakatōhea land between Ōhiwa Harbour and Waiaua River, which was the most fertile and productive land of the hapū of Te Whakatōhea. Te Whakatōhea also lost most of their access to the coastline as a result of the confiscation.

Te Tiriti Breaches

59. Without lawful excuse and in gross breach of its obligations under Article Two of Te Tiriti, the Crown:
 - (a) Enacted the Settlements Act 1863 to create a legal mechanism for the confiscation of the land of Māori deemed to be in rebellion against the Crown.
 - (b) Unlawfully and unjustly applied that Act for the murder of Volkner;

- (c) Unlawfully and unjustly decided that Te Whakatōhea hapū, including Ngāti Rua, were in rebellion, without properly investigating their involvement in alleged acts of rebellion;
- (d) Confiscated 144,000 acres of Te Whakatōhea land, including Ngāti Rua land, which was a disproportionate, unlawful and unjust response.

Specific Prejudice

- 60. The labelling of Te Whakatōhea as ‘rebels’ and subsequent confiscation represented a collective punishment of all of Te Whakatōhea for the murder of Volkner and resistance to the Crown invasion, and resulted in an ongoing stigma and whakamā attaching to the people of Te Whakatōhea including Ngāti Rua.
- 61. The confiscation of Ngāti Rua land and destruction of Ngāti Rua property resulted in the social, cultural and economic devastation of Ngāti Rua, resulting in intergenerational poverty and leaving them unable to properly provide for their own people or their manuhiri.
- 62. The confiscation also severed the physical connection between Ngāti Rua and much of their whenua, maunga, awa and moana, affecting their spiritual and cultural relationship with those taonga and destroyed their economic base in agriculture and trade.

VI Te Take Tuaono: The Compensation Court

- 63. In 1867, the Crown established a Compensation Court to sit at Ōpōtiki to determine whether further confiscated lands should be returned, provided that ‘rebels’ submitted to the Crown’s authority.
- 64. The Crown established prejudicial processes that resulted in little if any legal representation for Māori claimants at Court hearings and failed to provide the proper opportunity for all interested parties to be heard before the Court. The Court was provided insufficient time to properly investigate title.
- 65. The process allowed any individual to make a claim for land through the Court with no regard for hapū customary title according to tikanga.

66. The Crown empowered Special Commissioner JA Wilson to negotiate ‘out of court’ settlements for the return of confiscated lands to ‘loyal’ Māori in parallel to the Compensation Court processes.
67. The negotiation process failed to properly account for hapū tikanga on who had the proper authority within hapū to negotiate with the Crown over the return of land.

Te Tiriti Breaches

68. In gross breach of its obligations under Te Tiriti, the Crown passed legislation requiring Ngāti Rua to submit to Crown authority in order to retain control of some of their lands, in contravention of Articles One and Two of Te Tiriti.
69. The Crown further breached Article Three of Te Tiriti in its establishment of the Compensation Court and parallel negotiation process by failing to afford to Ngāti Rua the same rights of natural justice and fair procedure entitled to persons under British law.

Specific Prejudice

70. The Compensation Court and parallel negotiation process prejudiced Ngāti Rua by eroding their legal and constitutional frameworks as grounded in tikanga and tino rangatiratanga over their traditional lands.
71. Ngāti Rua were also prejudiced by the lack of recognition of tikanga that led to the grant of customary Ngāti Rua land to other hapū in compensation for the confiscation.

VII Ko Te Take Tuawhitu: The Ōpape Native Reserve

72. On 18 April 1866, the Crown designated 20,787 acres of confiscated land to be reserved as the Ōpape Native Reserve. The designation of the reserve out of the confiscated land was made by the Special Commissioner of Claims for the Bay of Plenty appointed to the region.
73. The Ōpape land had traditionally been held in the customary title of Ngāti Rua. However, the Crown awarded the Ōpape Native Reserve to the ‘rebels’ of the six hapū of Te Whakatōhea.

74. In April 1866, the Crown moved the Te Whakatōhea people who had already surrendered to the Ōpape Native Reserve. The Reserve later became a new home for the entire Te Whakatōhea population, not just those who surrendered as rebels in 1865.
75. The Crown selected the Ōpape land for the Reserve due to the poor land quality and its geographical separation from the confiscated lands allocated to Pākehā settlers. Much of the land was forested and rugged hill country, unsuitable for farming and cultivation. The Ōpape Native Reserve was at best second class land. Only 200 acres of the land was ploughable. In particular, the forested hill country was extremely steep and difficult to access, making it impractical to develop for economic benefit.
76. In 1879, the Crown made specific allocation of the Ōpape Native Reserve to the six hapū. The Reserve was surveyed and each hapū was allocated two blocks, one with coastal access and one bushland block. Ngāti Rua's blocks were titled Ōpape 3 and 12 respectively. Land was allocated on a per head basis as between hapū, such that Ngāti Rua, as the largest hapū, received larger block allocations than other hapū.
77. The Crown paid insufficient regard to tikanga and whakapapa in determining lists of owners in the subdivision of the Ōpape Reserve blocks. The Crown included individuals from outside Te Whakatōhea on the ownership lists and did not appropriately consider the nuance of cross-hapū whakapapa in determining ownership lists for hapū allocated blocks.
78. The survey and subsequent allocation of the blocks within the Reserve was finalised in 1883. However, the Crown failed to protect the interests of Ngāti Rua by not declaring the reserves inalienable.
79. Further, the legal titles to the partitions were only finalised between 1907 and 1935. Prior to that, Ōpape Native Reserve retained its legal status as Crown land (the confiscation proclamation having extinguished customary title).

80. The Crown treated the land as Crown land until the 1900s, even though Ngāti Rua and the other hapū had equitable interests in the land. The Crown laid off hundreds of acres of lands for roads in the Ōpape Native Reserve, without paying compensation. Some of this land was acquired from Ōpape 3 and Ōpape 12. In allocating the Ōpape Native Reserve blocks to each of the six hapū, the Crown disregarded tikanga and failed to recognise that allocating Ngāti Rua's ancestral land to the other Te Whakatōhea hapū undermined Ngāti Rua's mana and rangatiratanga and created tensions between the hapū that are ongoing to this day. Ngāti Rua bore the burden of extending their manaakitanga in order to accommodate their whanaunga hapū on their whenua tuku iho.
81. The Crown has never addressed the fact that owners from other hapū of Te Whakatōhea continue to hold land titles in Ngāti Rua's customary rohe to this day. The Crown has not investigated the possibility of returning those lands to Ngāti Rua in exchange for compensation to the other hapū of Te Whakatōhea.

Te Tiriti Breaches

82. The Crown breached Article Two of Te Tiriti by allocating Ngāti Rua's whenua tuku iho in the Ōpape Native Reserve to the other Te Whakatōhea hapū.
83. In breach of the Crown's Treaty duties of active protection and good faith partnership, the creation of the Ōpape Native Reserve discriminated against Te Whakatōhea by placing all six hapū on inadequate reserves apart from their customary lands, thereby interfering with the constitutional arrangements and relationships between Te Whakatōhea hapū according to tikanga Whakatōhea.
84. The Crown breached Article Two and the duty of active protection by failing to declare the Ōpape Native Reserve lands inalienable and subsequently confiscating more Reserve land to lay off roads, without payment of compensation.

85. The Crown is breaching Article Two and its obligation of redress through its ongoing failure to take action to address the continued holding of customary Ngāti Rua land by owners from other hapū of Te Whakatōhea.

Specific Prejudice

86. The allocation of blocks to specific hapū created new connections between each hapū and that land that did not arise from a tikanga basis. This forces hapū to find ways to navigate their inter-hapū relationships while acknowledging both Ngāti Rua's ancestral connection to the land and the modern significance of the blocks to each hapū. This compromises the integrity of iwi cohesion and tikanga Whakatōhea and impacts Ngāti Rua's relationship to their ancestral whenua.

C. LAND AND ADMINISTRATION ISSUES

VIII Ko Te Take Tuawaru: Imposition Of Western System Of Land Tenure

87. From 1862 onwards, the Crown enacted and implemented native land legislation and established the Native Land Court for the purpose of:
- (a) Commuting Māori customary title and rights into individualised fee simple title;
 - (b) Facilitating the alienation of Māori land for settlement including by waiving the Crown right of pre-emption and allowing private purchase;
 - (c) Promoting and facilitating the de-tribalisation of Māori and undermining the traditional leadership.
88. The Native Land Court process allowed any individual to make a claim for land through the Court with no regard for the tikanga and collective customary title of hapū.
89. The native land legislation forced Ngāti Rua to engage in its processes for the individualisation of title because this was the only effective mechanism for protecting their lands from the claims of other hapū and iwi in the Court.

90. The costs of obtaining title were often imposed upon Māori. The Crown often required Māori owners to pay for the surveying of land before the title would be investigated.
91. The Crown adopted a policy of surveying large blocks of land to reduce costs. This approach resulted in multiple hapū and iwi interests being subsumed in a singular block (such as the Whakapaupākihi, Whitikau, Te Wera and Te Houpapa blocks). This created conflict and facilitated the easier alienation of lands.
92. The Crown individualised titles to the 12 land blocks allocated to hapū within the Ōpape Native Reserve, including the Ngāti Rua blocks Ōpape 3 and Ōpape 12.
93. The tenure of Te Whakatōhea's remaining lands outside of the confiscation area were also converted from hapū based tenure to individual title through the Native Land Court.

Te Tiriti Breaches

94. The Crown breached Article One and Article Two of Te Tiriti and Treaty principles through its native land legislation by:
 - (a) failing to protect or provide for tikanga-consistent systems of tenure that enabled the collective management of Ngāti Rua lands against the generally expressed wishes of rangatira;
 - (b) imposing individualised tenure over Ngāti Rua lands, which facilitated their alienation by individuals at a greater volume than they would have sold as communities;
 - (c) Imposing a system of title and transfer in the Native Lands Act from 1873 onwards that was complex, inefficient and contradictory and did not reflect the nuanced system of customary title and rights in tikanga;
95. The Crown breached Article Three of Te Tiriti by implementing processes in the Native Land Court that did not respect principles of natural justice

and acted as a barrier to Ngāti Rua customary owners of land being properly heard in Court.

Specific Prejudice

96. The individualisation of title severed the collective Ngāti Rua hapū connection to their land and damaged the ancestral, spiritual relationship to that land. This disconnection from land destabilised the collective basis of Ngāti Rua as a hapū and undermined tikanga as the framework for their worldview.
97. Ngāti Rua's customary interests in certain lands (such as Whitikau) were lost by the award of individualised title to members of neighbouring hapū and iwi.
98. The individualisation of title facilitated the alienation of Ngāti Rua land into Crown and private ownership.

IX Ko Te Take Tuaiwa: Land Alienation

99. The Crown failed to ensure that the land Ngāti Rua retained after the raupatu was protected from alienation.
100. The Crown permitted extensive private purchasing of customary Ngāti Rua land in the Ōpape Native Reserve and from the reserve blocks that had specifically been allocated to Ngāti Rua in Ōpape 3, facilitated by the individualisation of title.
101. The Crown also actively took steps to alienate the land outside the confiscation zone and subjected Ngāti Rua to loss of their land interests through unfair purchase practices connected to individualisation of title.
102. These unfair practices included failing to adequately investigate who held customary ownership over lands, recognising preliminary purchase agreements, distributing advance payment prior to title investigation of the relevant lands, and forcing sale through creation of survey debts over land.
103. The Crown purchased lands in which Ngāti Rua held interests at nominal prices favourable to the Crown.

104. Many owners land offered to sell their land because they were in poverty following the destruction of Te Whakatōhea's economic prosperity during the invasion and raupatu.

Te Tiriti Breaches

105. The Crown breached the Article Two guarantee of tino rangatiratanga and failed in its duty of active protection by:

(a) purchasing from individual owners (and permitting private purchasers to do so), which did not respect the mana of rangatira to make collective decisions concerning hapū land and resulted in significant land loss;

(b) adopting purchase tactics that unfairly pressured Ngāti Rua to sell their lands;

(c) Purchasing at nominal prices that did not reflect the value of the land.

106. The Crown breached the Article Two guarantee of tino rangatiratanga and failed in their duty of active protection by failing to ensure that Ngāti Rua retained sufficient land to support their people in the face of the significant land loss already suffered through the raupatu and the grant of Ngāti Rua's customary lands at Ōpape to other hapū of Te Whakatōhea.

Specific Prejudice

107. The entire 20,787 acres of the Ōpape Native Reserve within the traditional rohe of Ngāti Rua has been alienated out of hapū customary title.

108. By 2021, only 1779.8 acres of Ōpape 3 subblocks remained Māori land in the hands of individual Ngāti Rua owners, in contrast to the 2979 acres held by Ngāti Rua owners in Ōpape 3 in 1888.

109. Nearly all of Ngāti Rua's customary lands outside the Ōpape Reserve have also been alienated out of collective Ngāti Rua ownership. Over half of Ngāti Rua's traditional interests in the Whakapaupākihi blocks have been alienated by Crown and private purchasing. To the extent individual Ngāti Rua owners have remaining interests in the Whakapaupākihi lands, these

interests are administered in land trusts along with the individual interests of owners from other hapū.

110. The only collectively owned land akin to a hapū title at Ōmarumutu Marae and Rangimatanui Urupā.
111. The rendering of Ngāti Rua as an almost landless hapū fundamentally harms their existence as tangata whenua.

X Te Take Tekau: Rating

112. The Crown imposed rating legislation that interfered with Ngāti Rua's ability to pursue their economic development consistently with their tino rangatiratanga.
113. The Crown imposed rates over Māori land, including Ngāti Rua land in the Ōpape Reserve, without due consideration of the economic and geographical barriers Māori faced in developing the unfertile land the Crown returned following confiscation. This commonly led to the accumulation of debt over remaining lands in Māori hands,
114. The Crown's rating legislation regime variously allowed for the compulsory acquisition of land if rates were in arrears, for nominated owners to be sued for the recovery of rates and for charging orders to be placed on the title of lands with rates arrears. This resulted in the loss of land by forcing the sale of land and drastically or entirely reduced the profits from the sale of land. This made it difficult for Māori to access financing to develop their lands and further damaged the economic base of Ngāti Rua.

Te Tiriti Breaches

115. The Crown breached Article Two of Te Tiriti and the duty of active protection by imposing rates over Ngāti Rua lands, inconsistently with the tino rangatiratanga of Ngāti Rua.

Specific Prejudice

116. The introduction of rates over Māori land undermined the effective administration of lands held by Ngāti Rua owners, by imposing an economic burden over those lands and preventing further development.

XI Te Take Tekau Mā Tahi : Public Works Takings

117. Across the 19th, 20th and 21st centuries, the Crown enacted a public works taking scheme that empowered the compulsory acquisition of Māori owned land. The primary legislative scheme which allowed the Crown to compulsorily acquire Māori land for specified public purposes had two main strands: the Public Works Acts and provisions in the Native Land Acts which allowed Māori land to be set aside for roads without compensation.

118. The Crown failed to act even-handedly between Māori and Pākehā by enacting legislation controlling the compulsory acquisition of land that gave fewer protections to Māori land.

119. The Crown used the public works regime to compulsorily acquire lands of Ngāti Rua.

120. This included land from the Ōpape Reserve taken under the Public Works Act 1882 Amendment Act 1884 for roads, in addition to roads that had already been laid off as Crown land without compensation.

121. When legal title was issued to the Ōpape Reserve in the 1900s, the Crown was able to utilise legislative provisions that allowed the taking of 5% of the land for roading without compensation for 15 years after legal title was issued. Further land from Ōpape Reserve was taken without compensation under these provisions.

122. The Crown also compulsorily acquired 96 acres of land in the Whakapaupākihi blocks despite the Native Land Court declaring that land block inalienable to safeguard its preservation for future generations.

123. 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 the former owners when they were no longer required for that purpose.
124. The Crown failed to ensure that adequate compensation was provided for all land taken from Ngāti Rua and did not account for the cultural and spiritual value of land taken, in addition to the economic value. Frequently, no compensation was paid at all.
125. The Crown failed to ensure that Ngāti Rua owners and owners of other hapū of Te Whakatōhea were given adequate opportunity to be represented at compensation hearings held following compulsory acquisitions of their land.
126. The Crown failed to consider and exhaust all potential options that would prevent the extinguishment of title to lands and to allow title to be retained by owners from Ngāti Rua.

Te Tiriti Breaches

127. In breach of Article Two of Te Tiriti and the Crown's duty of active protection, legislation permitted compulsory acquisition of Māori lands for public works.
128. In breach of Article Two and the duty of active protection, the Crown compulsorily acquired Ngāti Rua land despite the substantial land loss Ngāti Rua had already suffered. The Crown did so without adequate consultation or paying fair compensation.
129. In breach of Article Three of Te Tiriti, the Crown enacted legal regimes for the compulsory acquisition of land that was more protective of Pākehā property rights than of Māori property rights.

Specific Prejudice

130. Ngāti Rua suffered economic, cultural and spiritual prejudice through the acquisition of parts of the little land that remained in their ownership following the devastation of the invasion and raupatu by the Crown. The

acquisitions further severed the connection of Ngāti Rua to their traditional rohe.

XII Ko Te Take Tekau Mā Rua: Ōmarumutu Native School

131. The Native Schools Act 1867, which promoted the European-style education of Māori children by church missionaries, required a proactive commitment from Māori communities in the form of setting aside land for a school. The costs of buildings were to be shared equally by the Crown and Māori.

132. Māori were therefore required to make a financial commitment in order to receive the same access to education as their Pākehā counterparts.

Ōmarumutu School – first site

133. In 1873, Ngāti Rua requested that the Crown establish a native school at Ōmarumutu and Ngāti Rua gave four acres of quality land for this purpose. Due to their impoverishment following the raupatu, the hapū provided a labour contribution and the Crown provided the cash contribution to the construction of the school.

134. The school opened in 1873. However the site was not surveyed and granted title until 1880. This 1880 grant of title occurred decades before title was issued to the remaining Ōpape Native Reserve subdivisions. Consequently, the Crown treated the site as if it had been Crown land, rather than gifted land and without regard to the equitable interests of the Ngāti Rua owners.

135. If the site had not been reserved for the school, it would have been part of the Ōpape 2 block that was later granted to Ngāti Ngāhere, and was therefore deducted from the land set aside as reserves.

136. The school was later transferred to a second site. The Crown failed to return the original site to the Ngāti Rua customary owners or to the Ngāti Ngāhere owners of Ōpape 2 because it did not consider the land to have been gifted land. The Crown subsequently alienated the land to the Native Department.

Ōmarumutu school – second site

137. In 1938, the Education Department considered the Ōmarumutu School should be relocated to a new site and identified a replacement location at a site in Ōpape 3Y1B2. The block was owned by three members of the Nikora whānau of Ngāti Rua.
138. Despite reluctance on the part of Wiremu Nikora to sell this land for a school, the Crown pressured the sale of the land by threatening to compulsorily acquire the land under the Public Works Act. The community also pressured the Nikora whānau to sell by petitioning the Minister of Education to take the land from the Nikora whānau.
139. In light of this pressure and the potential benefit to the community, Ngāti Rua as a hapū agreed that there should be a tuku of the land.
140. The Crown then acquired the land under the Public Works Act in order to expedite transfer of title. Compensation of approximately 200 pounds was awarded, payable to the Waiariki District Māori Land Board.
141. In the 1980s, the Crown decided to dispose of the part of the school site containing the school teacher's residence. After an initial failure to offer the land on a buy back basis to descendants of the Nikora whānau, the land was subsequently purchased by their descendants for \$55,000 in 1992.

Te Tiriti Breaches

142. In breach of Article Two of Te Tiriti and the duty of active protection, the Crown failed to recognise that the site of first Ōmarumutu school was gifted for a specific purpose and instead treated the land as Crown land. The Crown failed to respect the tikanga of tuku whenua by failing to return the land when the school was disestablished on the original site.
143. In breach of the Article Two of Te Tiriti and the duty of active protection, the Crown acted in bad faith in utilising the threat of compulsory acquisition to purchase land in Ngāti Rua ownership for a school site against the wishes of the owners.

144. In breach of Article Three of Te Tiriti and the principle of equity, the Crown required Ngāti Rua to provide land for the establishment of a school.

Specific Prejudice

145. Ngāti Rua were prejudiced by the lost ownership of their land at the original Ōmarumutu School site, including the failure to return their ancestral land.

146. Ngāti Rua were also prejudiced by the forced sale of the land at the second site.

147. Ngāti Rua whānau members were further prejudiced by the requirement to purchase a portion of that land back for \$55,000 in order to regain ownership.

XIII Ko Te Take Tekau Mā Toru: The Nukutere Lands Trust

148. In the late 20th century, the six hapū of Te Whakatōhea amalgamated their interests in the bush blocks of the Ōpape Reserve in order to maximise the utility of the blocks and facilitate more efficient management. Maximising economic potential of remaining land was critical in the face of ongoing effects of the raupatu. The amalgamated blocks are now held and administered by the Nukutere Lands Trust.

149. The Nukutere Lands Trust contains some forestry blocks and cleared land for grazing but primarily consists of native bush, due to the topographical impracticality of accessing the land for development. This reflects the impact of the Crown's decision to allocate poor quality land to the hapū of Te Whakatōhea following the raupatu.

150. The Nukutere Lands Trust are the traditional lands of Ngāti Rua. Further, the largest portion of the Nukutere Lands Trust lands derives from the earlier Ōpape 12, which was granted to Ngāti Rua owners following the titling of the Ōpape Native Reserve.

151. This approach was therefore an act of manaaki from Ngāti Rua to their whanaunga hapū, in order to share the burden of the Crown's confiscations and the ongoing impacts.

152. However, the Trust administration is designed so that all individual owners from the six hapū have equal voting rights. The practical effect of this approach subsumes the mana ā-hapū of Ngāti Rua to manage their own lands and resulted in Ngāti Rua authority over their customary lands in the Nukutere Lands Trust being lost in a sea of owners.

Landlocking

153. The Nukutere Lands Trust lands are effectively landlocked and remain difficult to access by the owners, and by Ngāti Rua.

154. In 2013, the Māori Land Court made access orders, subject to the payment of compensation to the neighbouring owners. The access orders were granted at a point some distance from the forestry blocks, making the access of low utility to the development of the forestry's economic potential.

155. Despite the orders for access being made, no access way has in fact been constructed.

156. The practical result is that Ngāti Rua's traditional authority over their ancestral lands has been undermined and their access to the land remains impeded, undermining their ability to efficiently develop the land for economic benefit.

Te Tiriti Breaches

157. In breach of Article Two and the duty of active protection, the Crown failed to protect Ngāti Rua's tino rangatiratanga by failing to provide tikanga-consistent options for collectively managing and developing the Nukutere lands.

158. In breach of the Article Two guarantee of rangatiratanga over land and the duty of active protection, the Crown failed to ensure access was preserved to the lands held by the Nukutere Lands Trust for the use of the beneficial owners from Ngāti Rua.

159. The Crown breached the principles of Te Tiriti and its obligation of redress by:

- (a) failing to address the landlocking of the Nukutere lands until 2013. This remedy was not meaningful because access was granted at a point of low utility for developing the economic potential of the forestry blocks;
- (b) requiring the Nukutere Lands Trust to pay compensation to neighbouring landowners in order to receive access to the land;
- (c) failing to adequately resource the building and maintenance of access following the grant of access orders by the Māori Land Court.

Specific Prejudice

- 160. Ngāti Rua's rangatiratanga over the lands in the Nukutere Lands Trust has been subsumed by the overlay of the trust structure, affecting their relationship with their ancestral whenua.
- 161. The lack of access to the lands has prevented the full economic development of the land for the benefit of the beneficial owners and had flow on effects to the cultural relationship of Ngāti Rua to this block because of the difficulties of access particularly affecting kaumātua.
- 162. The Māori Land Court orders for access require the Nukutere Lands Trust to meet the costs of upgrading and maintaining the track over which access was granted and to pay total compensation of \$22,500 to the neighbouring owners. This places a further burden on the economic resources of the beneficial owners.

D. FAILURE TO PROTECT TAONGA

XIV Ko Te Take Tekau Mā Whā: Te Reo Māori

- 163. The Crown actively suppressed the use of te reo Māori by Ngāti Rua and prevented the intergenerational transmission of te reo.
- 164. The Crown enacted educational policies through Native Schools legislation that directed Māori students to be taught only in English. Native school students were punished for speaking te reo Māori. The policy of suppression of te reo Māori in native schools continued into the 1960s.

165. The Crown did not take adequate steps to remedy this historic suppression and support the revitalisation of te reo Māori among Ngāti Rua.

Te Tiriti Breaches

166. The Crown, in breach of Article Two and the principles of Te Tiriti, failed in its duty to actively protect te reo Māori within Ngāti Rua.

Specific Prejudice

167. The use of te reo Māori within Ngāti Rua deteriorated over time, both as a language generally and as a specific dialect. The intergenerational transmission of te reo was undermined.
168. Ngāti Rua has been required to expend their own resources to revitalise the use of te reo Māori within their hapū.
169. Generations of Ngāti Rua hapū members have been left facing barriers to accessing their ancestral language and prevented from benefitting from associated taonga, such as waiata, haka and karakia.

XV Ko Te Take Tekau Mā Rima: Suppression Of Traditional Knowledge

170. The Crown took steps to assimilate Ngāti Rua into Pākehā society and attempted to suppress traditional practices grounded in mātauranga tuku iho.
171. Prior to the invasion and raupatu, Ngāti Rua had tohunga who were the repositories of knowledge within their particular fields, which included te reo me ōna tikanga. Their mātauranga and its associated whakapapa was embedded in the reo and was a vibrant part of the cultural life of Ngāti Rua.
172. The Crown enacted legislation including the Tohunga Suppression Act 1907, the Public Health Act 1900 and the Health Act 1920 which made it illegal for traditional Māori teachers, healers and experts to train their people in customary practices traditionally carried out by tohunga.

Te Tiriti Breaches

173. In breach of the Article Two guarantee to respect the rangatiratanga of Māori over their taonga, the Crown outlawed tohunga and thereby

undermined the ability of Ngāti Rua to utilise mātauranga for the wellbeing of their hapū.

Specific Prejudice

174. The Crown's suppression legislation resulted in the decline in tohunga of Ngāti Rua being able to share and pass on traditional knowledge, resulting in the intergenerational loss of expertise within Ngāti Rua.

XVI Ko Te Take Te Tēkau Mā Ono: Failure To Protect Wāhi Tapu

175. Ngāti Rua have a cultural and spiritual connection to wāhi tapu within their rohe.

176. From the 19th century onwards, the Crown showed no real regard for the protection of wāhi tapu during the period of extensive Crown land acquisition in the Ōpōtiki district between 1865 and 1900.

177. The large scale alienation of land separated the hapū of Te Whakatōhea from their wāhi tapu. In particular:

- (a) The maunga of Ngāti Rua, Mākeo, was allocated partially to Te Ūpokorehe and Ngāti Patu in the Ōpape Native Reserve.
- (b) Kapuaārangi maunga, which is a significant wāhi tapu to Ngāti Rua, has been alienated into private ownership.
- (c) Waiwhero battleground on the coast has not had restricted access, and the Ōpōtiki District Council permitted the Motu cycle trail to be built within close proximity of this wāhi tapu.
- (d) The Ōpōtiki District Council moved kōiwi that were disturbed during harbour redevelopment works to a new site without appropriate consultation with Ngāti Rua rangatira.

178. Environmental and resource management legislation has delegated powers of management of land and resources, including wāhi tapu to local authorities or the Department of Conservation. The legislation has not sufficiently recognised or respected the importance of wāhi tapu to Ngāti

Rua or the tikanga pertaining to them, resulting in the fracturing of Ngāti Rua's relationship with their wāhi tapu in and around the inquiry district.

Te Tiriti Breaches

179. The Crown, in breach of Article Two and the principles of the Treaty of Waitangi, has failed to actively protect and preserve wāhi tapu and other sites of cultural significance within the rohe of Ngāti Rua.
180. The Crown's legislative regime has restricted Ngāti Rua from being able to protect their wāhi tapu and maintain a traditional spiritual connection to those wāhi tapū, in contravention of the guarantee of rangatiratanga under Article Two of Te Tiriti, which includes kaitiakitanga.

Specific Prejudice

181. Ngāti Rua suffered prejudice because the Crown's failure to recognise the importance of and protect wāhi tapu has resulted in the wide-spread alienation and/or desecration of wāhi tapu in and around their rohe and damaged their spiritual connections to those wāhi tapu.

E. SOCIO-ECONOMIC ISSUES

XVII Ko Te Take Tekau Mā Whitu: Failure To Provide Adequate Health Services

182. Following the invasion and raupatu, Ngāti Rua lived in impoverished conditions and were susceptible to disease as a result. In part, illness was linked to the lack of food from the poor quality land reserved to them.
183. The Crown failed to provide adequate access to health services in the Te Whakatōhea district and failed to take into account Māori values and tikanga when delivering health and social services to Ngāti Rua, resulting in significant health inequities that continue to the present day.
184. The Crown suppressed the use of traditional Te Whakatōhea rongoa by enacting the Tohunga Suppression Act 1907, further contributing to poor health outcomes.

185. The people of Ngāti Rua established a hospital at Ōmarumutu Marae during the 1914-1918 influenza epidemic to care for the sick during disease outbreaks due to the fact that they were unable to access health services in Ōpōtiki. This required changing the tikanga of Ōmarumutu Marae and led to tohunga health practitioners no longer practising at the marae as a result of these changes.

Te Tiriti Breaches

186. The Crown breached Article Three of Te Tiriti and the principles of equity and options by failing to provide adequate and culturally appropriate health services to Ngāti Rua, resulting in Ngāti Rua experiencing health inequity.

187. The Crown breached Article Two of Te Tiriti by undermining Ngāti Rua tino rangatiratanga by attempting to suppress the use and transmission of intergenerational knowledge of rongoa.

Specific Prejudice

188. Ngāti Rua people suffer from significant health inequity compared to the New Zealand population as a whole.

189. Many Ngāti Rua members died from influenza as a result of poor health conditions, including those buried in a mass grave at Rangimatanui urupā in 1918.

XVIII Ko Te Take Tekau Mā Waru: Failure To Provide Adequate Education

190. The Crown did not provide students of native schools with the same level of education as that provided to Pākehā students in mainstream schools.

191. The Crown emphasised the teaching of manual and domestic skills in native schools, for the purpose of developing Māori students into the working class of the colonial economy.

192. The students of the Native School at Ōmarumutu were subjected to discrimination, racism and physical violence from their teachers.

193. Ngāti Rua has undertaken its own efforts to educate its children according to the cultural and linguistic traditions of Ngāti Rua through the

establishment of kohanga reo at Ōmarumutu Marae and through work to transition Ōmarumutu school to a bilingual school.

Te Tiriti Breaches

194. The Crown breached Article Three and the principles of equity and options by failing to provide an adequate education to the children of Ngāti Rua on an equitable basis with the education provided to Pākehā communities.
195. The Crown breached the principles of active protection and options by failing to fund and support the educational development of Ngāti Rua in accordance with their cultural and linguistic traditions.

Specific Prejudice

196. Ngāti Rua suffered from a cycle of poverty that was difficult to break due to the lack of adequate education Ngāti Rua children received.
197. Ngāti Rua have been prevented from equitable participation in wider New Zealand society, and the economy, by receiving an inequitable level of education.

XIX Ko Te Take Tekau Mā Iwa: Failure To Promote Economic Development

198. Following the invasion and raupatu, Ngāti Rua were left impoverished, with limited land and resources and a destroyed tribal economy.
199. The Crown failed to take positive action to remedy this situation and support the economic recovery and development of Ngāti Rua, including by:
 - (a) Failing to adequately support Ngāti Rua land owners to utilise and develop their own remaining lands;
 - (b) Failing to facilitate the creation of employment opportunities for Ngāti Rua within their traditional rohe;
 - (c) Failing to provide adequate redress and compensation for the destruction of the Ngāti Rua economy during the invasion and raupatu. In the 1940s, the Crown paid 20,000 pounds to the Te Whakatōhea Māori Trust Board in compensation for the confiscation

of the whenua of the six hapū of Te Whakatōhea. This was highly disproportionate to the prime value and size of the confiscated land and was completely insufficient to provide Ngāti Rua an economic foundation for future development and prosperity.

Te Tiriti Breaches

200. The Crown breached Article Two of Te Tiriti and the principles of active protection by failing to actively support the economic development and welfare of Ngāti Rua following their impoverishment at the hands of the Crown
201. The Crown breached Treaty principles and the obligation of redress by failing to provide adequate redress for the destruction of the economic base of Ngāti Rua and the hapū of Te Whakatōhea.

Specific Prejudice

202. The enduring impact of land confiscation and the consequent economic deprivation in the rohe of Ngāti Rua has driven urbanisation as hapū members sought improved job opportunities and economic stability. The lack of employment in Ōpōtiki forced Ngāti Rua into urban migration in the mid-20th century.
203. As a result of urbanisation, 90% of Whakatōhea, including Ngāti Rua hapū members, lived and worked outside their traditional rohe by 2020, with many disconnected from their whanaunga, reo, tikanga, and whenua.
204. Unemployment, low income, poor quality housing, housing instability and overcrowding are disproportionately high amongst the hapū of Te Whakatōhea in comparison to the rest of New Zealand society.

F. ENVIRONMENT

XX Ko Te Take Rua Tekau: Resource Management

205. The Crown has implemented resource management regimes over Ngāti Rua lands, sea, rivers and environmental taonga that in effect:
 - (a) transfer authority over environmental resources to the Crown;

- (b) allows the Crown to benefit from those resources;
- (c) degrades the taiao of Ngāti Rua while denying them the ability to exercise kaitiakitanga.

206. The Crown's resource management regimes have dispossessed Ngāti Rua of their full ability to exercise tino rangatiratanga and kaitiakitanga over their environment, rivers, fisheries, and other environmental taonga by:

- (a) establishing Eurocentric bodies to manage and control the natural environment within the rohe without regard for the tikanga of Ngāti Rua;
- (b) delegating powers of authority to those established agencies; and
- (c) implementing legislation and encouraging policy to facilitate Eurocentric aims and objectives in relation to the environment.

207. The Crown failed to ensure Ngāti Rua are consulted about environmental activities under resource management legislation in their rohe. The grant of legal title to blocks in the Ōpape Native Reserve to other hapū of Te Whakatōhea has resulted in those hapū being consulted as landowners under resource management legislation about lands and waterways in the rohe of Ngāti Rua, undermining the mana and rangatiratanga of Ngāti Rua.

Environmental Degradation

208. The regime implemented by the Crown allows activities that cause environmental degradation and significant water pollution including the depletion of water volume and water quality in rivers.

209. Activities carried out under the Crown's resource management regimes that have degraded the taiao in Ngāti Rua's rohe include:

- (a) the clearance of native bush;
- (b) forestry planting;

- (c) the introduction of rabbits, possums, goats, trout and other exotic species to the detriment of indigenous species;
- (d) the use of toxic fertilisers and sprays;
- (e) the establishment of irrigation schemes using water from nearby waterways to support the intensification of farming and horticulture;
- (f) land drainage schemes.
- (g) the discharge of human/industrial/farm and horticultural wastes into water ways;
- (h) establishment of a water treatment plant on the Ōtara River.

Flooding

- 210. The Crown allowed the clearance of native vegetation and timber logging operations, which contributed to soil erosion and impacts downstream drainage of waterways in the district. These actions led to regular flooding in the Ngāti Rua rohe.
- 211. The regular flooding of the Waiaua River requires Ngāti Rua hapū members living in the Rāhui valley to leave their homes and take sanctuary in Ōmarumutu Marae.
- 212. The Crown has failed to proactively address this ongoing flood risk by taking actions such as installation of adequate stopbanks.
- 213. The Crown, through the local Council, took action to protect settler lands in Ōpōtiki from flood risks in the district, including through the Waioeka-Ōtara Rivers Scheme and failed to take the same actions to protect the rohe of Ngāti Rua.

Te Tiriti Breaches

- 214. In breach of Article Two of Te Tiriti, the Crown developed and imposed upon Ngāti Rua a resource management regime that undermines Ngāti Rua’s right to exercise tino rangatiratanga and kaitiakitanga over their environment, rivers, waterways, fisheries, and other environmental taonga.

215. The Crown further breached Article Two of Te Tiriti by failing to actively protect those lands from environmental degradation, water pollution and flooding.

Specific Prejudice

216. The Crown's usurpation of authority over the Ngāti Rua environment has prevented Ngāti Rua from fulfilling their obligations as kaitiaki, interfered with their ability to draw economic benefit from their environment and damaged the spiritual and cultural relationship of Ngāti Rua to their environment.

217. The environmental degradation and pollution facilitated by the Crown's actions has prejudiced Ngāti Rua by damaging:

- (a) The mauri of the rivers in the Ngāti Rua rohe;
- (b) The health and wellbeing of traditional fisheries and food gathering areas, including the loss of habitats for taonga species;
- (c) The ability of Ngāti Rua to practise traditional activities such as preparing rongoa and weaving materials;
- (d) The Ngāti Rua cultural and spiritual relationship to their environment and ancestral taonga and ability to carry out traditional spiritual practices.

XXI Ko Te Take Rua Tekau Mā Tahī: Relationship to the Moana

218. Ngāti Rua have always held customary title according to tikanga over their rohe moana, including their fishing grounds. The rohe moana extends out to sea from Ngāti Rua's landward boundaries as far as Whakaari and Te Paepae Aotea, which are taonga tuku iho. The relationship of Ngāti Rua to the moana became of increased importance to their physical, cultural and spiritual wellbeing following the Crown's confiscation and alienation of Ngāti Rua land.

219. Ngāti Rua have never surrendered their customary rights to their fishery, which were guaranteed by Article Two of Te Tiriti. However, the Crown assumed for itself the right to regulate the fishery.
220. The Crown implemented the Foreshore and Seabed Act 2004, which purported to extinguish customary title and then reinstated those rights but with inferior statutory titles through the Marine and Coastal Area (Takutai Moana) Act 2011. This legislation prevents Ngāti Rua from fully exercising their tino rangatiratanga and kaitiakitanga over their rohe moana.

Te Tiriti Breaches

221. The Crown breached Article Two of Te Tiriti and the duty of active protection by failing to actively protect the relationship of Ngāti Rua to the moana and their customary title, by undermining their ability to exercise tino rangatiratanga and kaitiakitanga over their rohe moana and fishery resources.

Specific Prejudice

222. The Crown's purported extinguishment of Ngāti Rua's customary rights over their rohe moana have interfered with Ngāti Rua's ability to fulfil their kaitiakitanga obligations and deprived them of the full economic benefit of their customary fisheries and resources.

G. SUMMARY OF PREJUDICE

223. The Claimants say that as a result of the acts and omissions of the Crown, Ngāti Rua have suffered significant prejudice. As a consequence of the Crown's Tiriti breaches, Ngāti Rua have suffered and continue to suffer various prejudicial effects including:
- (a) the undermining of their mana and tino rangatiratanga and a consequential loss of economic, cultural and political autonomy;
 - (b) damage to the inter-hapū relationships within Te Whakatōhea;
 - (c) the loss of tribal lands and waterways;

- (d) the loss of customary fisheries and waterways, access to and customary knowledge of such fisheries and waterways;
- (e) the loss of knowledge of, or vastly reduced practice of, customary religious practices, mātauranga, and tikanga;
- (f) loss of their economic prosperity that has continued to the present day;
- (g) loss of opportunity to develop their lands and resources;
- (h) undermining the ability to carry out their duties, obligations, and functions as kaitiaki;
- (i) the undermining of their ability to properly host manuhiri with provision of their traditional kai rangatira;
- (j) the desecration of the natural environment of the hapū and the abundance of natural resources; and
- (k) the impairment of, or damage to, the spirit, wairua, mana, and ihi of the hapū .

H. RELIEF SOUGHT

224. Ngāti Rua seek findings that their claims are well founded.

225. Ngāti Rua also seek recommendations that:

- (a) the Crown makes a full, public and unreserved apology for those actions and omissions that are found to be in breach of Te Tiriti;
- (b) the Crown pays full and comprehensive compensation to Ngāti Rua for the above-particularised breaches of Te Tiriti;
- (c) the Crown provide Ngāti Rua with sufficient cultural redress which appropriately recognises the losses suffered by the Claimants as a consequence of the Crown's breaches of Te Tiriti;
- (d) The Crown facilitates the return of the land held by Nukutere Lands Trust to exclusive Ngāti Rua ownership by providing compensation

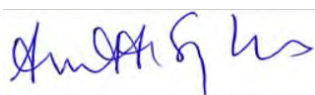
to the owners of other hapū of Te Whakatōhea in exchange for the extinguishment of their interests in that land;

- (e) The return of the land on which the Ōmarumutu School is located;
- (f) The resumption of any State-Owned Enterprises land and any land held by an institution under s 10(1) of the Education and Training Act 2020 in the district;
- (g) the Crown pays the costs of this claim; and
- (h) any other such recommendation that the Tribunal should consider appropriate.

DATED at Rotorua this **18th** day of March 2024



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