IN THE WAITANGI TRIBUNAL
KEI MUA I TE TARAIPIUNARA

WAI 1750
WAI 1787

UNDER — **The Treaty of Waitangi Act 1975**

CONCERNING — **The North-Eastern Bay of Plenty District Inquiry**

AND — **The Rongopopoia Hapū Claim, brought by Hinehou Leef (deceased), Richard Wikotu (deceased), Aroha Wikotu, Rocky Ihe (deceased), and Kahukore Baker**

AMENDED STATEMENT OF CLAIM FOR WAI 1787 IN 1750 INQUIRY

Dated: 30 January 2024

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THE CLAIMANTS SAY:

Introduction

1. This amended statement of claim ("ASOC") is filed for Wai 1787, the Rongopopoia Hapū Claim, brought by Hinehou Leef (deceased), Richard Wikotu (Deceased), Aroha Wikotu, Rocky Ihe (deceased), and Kahukore Baker.

2. The purpose of this ASOC is to focus on issues and Crown breaches of particular concern to Rongopopoia. The key issues that they wish to progress are:

    a. Identity of Rongopopoia Hapū;

    b. War and raupatu;

    c. Loss of whenua;

    d. Crown breaches concerning, socio-economic, cultural and intellectual taonga;

    e. Breaches concerning the environment and kaitiakitanga.

Rongopopoia[1]

3. The Rongopopoia hapū of the Upokorehe Tribe hold mana in the Upper Waiotahe Valley.

4. The Waiotahe Valley hosts a unique ecosystem and is the home of many taonga species of flora and fauna.

5. Rongopopoia is an important tupuna, and the hapū today directly descend down a distinct whakapapa line within Te Upokorehe.[2] Rongopopoia was the son of Rongowhakaata and Uetupuke. He married the daughters of the Hapū-oneone chief Panekaha. Rangiparoro and Rongopopoia were living at Onekawa, when Rongopopoia discovered

[1] See Wai 1787 #1.1.1 at [4].
[2] Wai 1750, #4.1.11 at 106.

children of Onekawa had been killed by Tuamutu's people when they went to retrieve a kite they were flying.

6. When it became known at Te Mawhai that Rongopopoia had discovered this, those living at Te Mawhai fled their pa. When Rongopopoia attacked the pa there was only Tuamutu's father, Repanga, living there, who Rongopopoia killed.

7. After some time, Tuamutu took revenge on Rongopopoia, drowning him and his men on a fishing trip. At this time, Rangiparoro was pregnant with Rongopopoia's son Kahuki. Tuamutu threatened to kill the baby if it was a boy.

8. The name "Uretara Island" is taken directly from the actions of Rangiparoro, when she camouflaged the 'Ure' of her new-born son Kahuki to resemble the 'Tara' of a baby girl, in order to save his life. Having fooled Tuamutu into believing the baby was a girl, Rangiparoro fled to Te Kaharoa, carrying her baby son Kahuki.

9. This is a significant event in the history of Upokorehe. Rangiparoro travelled to Te Kaharoa, naming significant places along the way, such as the Waiotahe River, and Maromahue, where she rested briefly on her journey to Kaharoa. She later married Haeora.

10. Kahuki, grew to be a famed War Chief who sought revenge for the killing of his father Rongopopoia. He pursued Tuamutu from what is now known as White Pine Bush all the way down the Waiotahe Valley, and continued to pursue Tuamutu until Kahuki was finally avenged on Tuamutu.

11. Kahuki's mana and actions in his pursuit of Tuamutu cemented many historical place names in and around the Waiotahe Valley and the Upokorehe rohe, or tribal area.

12. Rongopopoia are the sole kaitiaki of the following in the upper Waiotahe Valley:

a. Waiotahe Stream;

b. Te Awa o te Kahunui;

c. Te Rere o te Awa;

d. Pukenuioraho;

e. Eastern Kaharoa.

13. The wharenui Rongopopoia was built in 1942 and sits on land reserved for marae purposes that was gifted from Te Paea Wi Kotua.[3] One acre of whenua was partitioned from the Tahora No 2 block in 1933 for the Rongopopoia meeting house, "as property of the Upokorehe people living there."[4]

14. However, as Te Upokorehe has been branded one hapū, Rongopopoia did not receive the benefit of marae grants to maintain the wharenui, so the wharenui is now derelict. Rongopopoia have a trust for the restoration of the wharenui and continue to try to get funding to rebuild.[5]

Te Matapono o te Tiriti o Waitangi / Principles

Te mātāpono o te tino rangatiratanga

15. The Wai 1040 Tribunal considered that Te Raki rangatira did not regard kāwanatanga as undermining their own authority. They regarded the treaty 'as enhancing their authority, not detracting from it'. [6] Te Tiriti strengthened tino rangatiratanga rights and responsibilities. While it permitted a new, limited Crown presence in New Zealand, Te Raki Māori understood it as an agreement that would sustain and guarantee those rights and responsibilities that their communities had possessed and practised for generations prior to the time of the treaty signings. [7]

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[3] Peter Boston and Steve Oliver *Tahora* (Waitangi Tribunal, 2002) Wai 894 #A22 at 183.
[4] At 183.
[5] Wai 1750, #4.1.11 at 75.
[6] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga* (Wai 1040, 2023) at 59.
[7] At 58.

16. The Tribunal considered that those understandings must guide it in its interpretation of te mātāpono o te tino rangatiratanga in its assessment of subsequent Crown actions.[8]

17. The Te Rohe Pōtae Tribunal acknowledged Māori in the district exercised tino rangatiratanga prior to the signing of the Treaty. Tino rangatiratanga encompassed authority in a wide range of spheres – including political, social, economic, diplomatic, and military. It cannot be separated from mana.[9]

18. As there are anomalies between the text of the Treaty, guaranteeing rangatiratanga, and the actions and beliefs of the Crown, the Tribunal considered they must look to what the Rangatira of the district understood when signing. [10] Māori would have:[11]

> Understood it [the Treaty] to be a guarantee of their authority, autonomy, and independence. This encompassed their rights to maintain control of, use, and develop their lands, villages and other taonga. It also included rights to determine their own social, political, and institutional structures.

19. The Wai 898 Tribunal considered that the right of kāwanatanga was also granted to the Crown – but this was a power that was equal to rangatiratanga. [12] As such, more discussion was needed between the parties as to how their respective forms of power would co-exist and overlap.[13] Tikanga is central to tino rangatiratanga. Tikanga underpinned how 'tino rangatiratanga' was exercised as it was relevant to Māori land tenure, the environment, social and political relationships, and generally to the Māori way of life in Te Rohe Pōtae. Tikanga mediated

[8] At 59.
[9] Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* (Wai 898, 2023) at 155.
[10] At 155.
[11] At 155.
[12] At 156.
[13] At 166.

relationships between people and taonga, and was therefore an integral aspect of tino rangatiratanga. [14]

20. Because the guarantee of rangatiratanga was a promise of protection for Māori autonomy, the Crown was obliged to respect Māori tikanga as a system of law, policy, and practice. As such, the guarantee of tino rangatiratanga encompasses the exercise of tikanga.[15]

Te mātāpono o te kāwanatanga

21. The Wai 1040 panel concluded that Te Raki rangatira expected the authority of the Kawana would be confined to his own sphere, and that the Treaty required the Crown to engage with Te Raki rangatira on matters that might impact the respective spheres of each of them. [16]

22. Within te Tiriti, the crucial guarantee in the Rangatira's own language was that of their tino rangatiratanga over their whenua, their kāinga, and all their taonga. The Crown's treaty obligation was accordingly to foster tino rangatiratanga, not to undermine it. The Tribunal considered, in the context of Te Raki that: [17]

> When tensions arose with Te Raki Māori after its proclamations of sovereignty, it must refrain from coercing them into submission to Crown authority by the use of force, or the threat of force – an obligation which was greater when kāwanatanga was newly established, and the Crown was aware that Ngāpuhi prized their independence and were apprehensive about Crown actions.

23. In the absence of such exceptional circumstances, such as war, or in the interests of public safety, or in matters involving the national interest, the

[14] At 157.
[15] At 182.
[16] Waitangi Tribunal *Tino Rangatiratanga me te Kawanatanga*, above n 6, at 59.
[17] At 59.

Crown had and has no right to impinge on the rights of Te Raki hapū and iwi to make their own decisions.[18]

Te mātāpono o te houruatanga

24. Previous reports have found that the principle of partnership meant that Crown has the overarching authority to govern, make and enforce law, qualified by the requirement to give effect to Treaty guarantees.

25. However, the Stage Two Tribunal broke from this understanding and found that as Te Raki rangatira made no cession of sovereignty the authority that was granted to the Crown was not superior to that held by rangatira. The Crown's authority in Te Raki was expressly limited to its own sphere. Alongside it, and equal to it, was that of tino rangatiratanga.[19]

26. Therefore, the partnership requires both parties to co-operate in matters of governance. The scope and effect of these dual spheres of power, and how this is to be managed when such power overlaps, is for both the Crown and Māori to negotiate.[20]

27. These findings were made in relation to Te Raki Māori. However, in January 2024, the Wai 2180 Tribunal reviewed recent reports and remarked that the Tribunal has increasingly viewed the exchange between kāwanatanga and rangatiratanga as generally signifying a relationship between equals with separate spheres of authority, with partnership being relevant in areas where these spheres overlap.[21]

28. Upon review of the authorities, the Tribunal considered that the Crown had an obligation to enable Taihape Māori to exercise tino rangatiratanga in their sphere of authority.[22] The Tribunal noted that article 2 makes it clear that this obligation means the Crown must ensure that Māori have

[18] At 61.
[19] At 61.
[20] At 61–61.
[21] Waitangi Tribunal *He Whenua Karapotia, He Whenua Ngaro* (Wai 2180, 2024) at 71.
[22] At 73.

possession of and authority over their lands for as long as they wish to retain them.[23]

29. The Wai 2180 Tribunal also considered that recent jurisprudence on the nature of authority means duties of 'consultation' understate the importance of gaining Māori consent for intrusions into the realm of tino rangatiratanga.

30. The direction of the jurisprudence should be followed by this Tribunal.

Te mātāpono o te whakaaronui tētahi ki tētahi

31. The Northland Tribunal considered that mutual recognition and respect are vital qualities in the treaty relationship. As a principle, the Tribunal considered they flow from the treaty itself and the expectations of those who entered into the agreement. They were expectations that for Te Raki Māori were grounded in their experience of Pākehā who had come to trade or to settle. That relationship was underpinned by Te Raki Māori enthusiasm for western technology, for the extent of international trade and transport networks that opened to them and the array of shipping that visited their ports, and by their aspirations for future development, with Britain as an ally.[24]

32. Initially, the Tribunal considered that relationship at least had the basis of recognition and respect for each other's values, beliefs, laws and institutions.[25]

33. The Tribunal considered that it was the duty of the Crown at the outset to recognise and respect mana, tikanga, kawa, mātauranga, kaitiakitanga, and te reo Māori. At the heart of Māori values and the Māori way of life was and is tikanga. The Crown must recognise and respect tikanga Māori values and Māori systems of law.[26]

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[23] At 71.
[24] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga*, above n 6, at 63.
[25] At 63.
[26] At 64.

34. For the Crown, its recognition and respect of hapū communities, their authority over their lands and waters, taonga (including awa, maunga, and ngāhere), and their values, rights, and spheres of authority, should be evident in the importance it places on the treaty guarantee of tino rangatiratanga.[27]

35. In the 19th century, this meant the:[28]

> Duty of the Crown, as the coloniser, to understand the take by which Te Raki Māori held land and resources; recognition of the relationship between rangatira and their community, and the importance of that relationship to decision-making in Māori communities; recognition of the responsibility to be transparent in dealings with land, as being essential to community well-being ; respect for kaitiakitanga; respect for sites that should be protected in course of land transactions, in particular wāhi tapu; and understanding of Māori relationships with their waterways.

Te mātāpono o te matapopore moroki

36. The Te Raki Tribunal accepted that this duty of active protection is widely understood and utilised, and that it had and continues to have an important role in the context of Treaty claims and settlement processes.[29] However, the Tribunal considered "protection" to be problematic as it misunderstands the fundamentally separate, equivalent spheres of authority that were recognised by the treaty and understood by Te Raki Rangatira. The Crown cannot paternalistically 'protect' what it has no authority over. The Crown, after all, had guaranteed through the treaty that it would not take steps to undermine or usurp Māori autonomous control over their people, land, resources, and taonga.[30]

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[27] At 64.
[28] At 64.
[29] At 66.
[30] At 66.

37. Therefore, the Tribunal considered that the principle of active protection was not a duty arising from the Crown's sovereign status, as it is often articulated. Instead, it is an obligation on the Crown to help restore balance to a relationship that became unbalanced. Because the Crown expanded its sphere of authority far beyond the bounds originally understood by Ngāpuhi in February 1840, this duty is heightened so long as the imbalance remains.[31] However, partnership, not active protection, is the framework for governance of New Zealand.[32]

38. Upon reviewing recent reports, the Wai 2180 Tribunal commented that, in lands-based reports, the Tribunal has firmly established the Crown's duty to actively protect the right of Māori to exercise rangatiratanga in respect of their lands. It has identified various practical dimensions of this duty, including the need for the Crown to ensure Māori retained sufficient land of good quality for their present and future needs and to ensure local government and other bodies involved in land administration operate in a treaty-compliant way.[33]

Te mātāpono o te whai hua kotahi me te matatika mana whakahaere

39. The Wai 1040 Tribunal considered that Te Raki Māori expected that they would benefit from the Treaty relationship with the Crown.[34] Māori also had the right to develop as a people and to develop their properties. The Treaty guarantee of full rights in properties (including taonga to which British law did not recognise a property right) and of tino rangatiratanga over them included a right to develop them if Māori so chose.

40. To this end, they expected (and the treaty promised) that they would retain enough lands and other resources to ensure their current and future economic well-being. The Crown's duty was to ensure that Te Raki hapū each retained the lands and resources that they wished to retain or would need to engage with the new economy and benefit from

[31] At 66–67.
[32] At 67.
[33] Waitangi Tribunal *He Whenua Karapotia, He Whenua Ngaro*, above n 21, at 75.
[34] Waitangi Tribunal *Tino Rangatiratanga me te Kawanatanga*, above n 6, at 67.

the treaty and from colonisation. The Crown was required to make specific efforts to help Māori become 'equal in the field' with settlers.[35]

Te mātāpono o te mana taurite

41. Through Article III of the Treaty, Te Raki Māori were guaranteed equitable treatment and citizenship rights and privileges, and the Crown undertook actively to promote and support both. Equity requires the Crown to focus attention and resources to address the social, cultural, and economic requirements and aspirations for Māori.[36] The principle required the Crown to act fairly as arbiter between Māori and settlers; it could not advance settler interests at the expense of Māori.[37]

42. This has important implications for Māori political representation in national, provincial, and local bodies that make laws or by-laws expected to apply to Māori. It also applied to Māori voting rights.[38] The Crown had a further duty to ensure that Māori land titles were equitable, especially as the basis of new titles was imported from a very different legal and social context. Its duty, therefore, was to ensure that titles provided to Māori under the Crown's Native Land regime were both culturally and legally appropriate.[39]

Te mātāpono o te whakatika

43. Substantive redress is an important step in re-establishing the mutual recognition and respect embodied in the Treaty relationship, for restoring the honour of the Crown, and providing a renewed opportunity for giving effect to the treaty's guarantee of tino rangatiratanga and, ultimately, te mātāpono o te houruatanga.[40]

Good Governance

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[35] At 67.
[36] At 67.
[37] At 67.
[38] At 67.
[39] At 68.
[40] At 69.

44. The Wai 898 Tribunal considered the principle of good governance means that the Crown must keep to its own laws and not act outside the law. The Crown should be accountable for its actions in relation to Māori and subject to independent scrutiny.[41]

Breach 1: Rongopopoia Identity

45. Rongopopoia is one of the hapū of Te Upokorehe tribe.

46. The identification of Upokorehe as "one hapū" through the establishment of native reserves, and later the Whakatōhea Māori Trust Board, and for the purposes of settlement, ran counter to centuries of complex whakapapa of Te Upokorehe as a tribe. Hapū such as Rongopopoia have been ignored and invisibilised by the Crown.

47. This lack of recognition of Rongopopoia has irreparably damaged the hapū, and the integrity of Te Upokorehe as a tribe.

Breach 2: War and Raupatu

Te Upokorehe and Te Tiriti

48. A copy of Te Tiriti o Waitangi was signed by seven rangatira on 27 and 28 May at Ōpōtiki. It was Te Upokorehe Rangatira Wi Ake Ake, who signed Te Tiriti on behalf of Te Upokorehe.

49. Prior to signing, Wi Akeake underwent a hīkoi across the motu to speak to Te Upokorehe whanaunga about te Tiriti o te Waitangi. There is kōrero of Wi Akeake travelling as far as Te Waipounamu on this hīkoi. After recieving the blessings of the people he spoke with, Wi Akeake signed.[42]

50. Despite the care taken in seeking support, it is not known how Te Tiriti was explained to the rangatira who signed. The reports generated of the signing do not give detail of the speeches made or explanations given.

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[41] Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, above n 9, at 189.
[42] Wai 1750, 4.1.11 at 186.

51. Te Upokorehe say that when Wi Akeake signed Te Tiriti o Waitangi, he could not have intended ceding sovereignty to the Crown.

52. Te Upokorehe signed Te Tiriti to establish a partnership with the Crown, where both entities hold distinct and equal authority over their peoples. Where those spheres of authority would overlap and how this was to work in practice was intended to be an open conversation.

Building to War

53. Prior to the invasion, Ōpōtiki and its surroundings had become an important settlement for trade, with a number of hapū cultivating crops and undertaking production and refinement of goods for trade. By the 1860s, the north-eastern Bay of Plenty was home to a thriving economy.[43]

54. By 1863, various conflicts were taking place over the motu with the advent of Pai Mārire through Te Ūa, and the Kīngitanga movement.[44] Reverend Carl Sylvius Völkner was the third resident missionary in Ōpōtiki, and arrived on August 1861.[45]

55. During Völkner's visit to Auckland in January 1865, two Te Ūa emissaries arrived in Whakatāne and travelled to Ōpōtiki. En route, Kereopa and Patara's party of about 40 Pai Mārire and 150 Ngāti Awa were joined at Ōhiwa Harbour by an estimated 10 Whakatōhea, including Mokomoko. On their arrival in Ōpōtiki they placed a blockade on the Ōpōtiki Harbour.[46]

56. Völkner had been informing Grey of actions of local Māori and had failed to condemn the killing of Te Aporotanga. This made some suspicious of the reverend. The Pai Mārire believed Völkner was a spy for the Crown and that missionaries were attempting to secure land from

[43] Tony Walzl *War and Raupatu 1840 – 1871 Report* Wai 1750 #A30 at 15.
[44] John McLellan *Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874* Wai 1750 #A3 at 24.
[45] At 20.
[46] At 25.

Māori. Völkner returned from Auckland in March 1865, despite warnings from Nikora and Mihiterina that he would not be safe in Ōpōtiki.[47]

57. As Völkner's schooner docked, it was boarded and taken over by the Pai Mārire group. There are no reliable accounts of how it was decided that Völkner would be killed or of who was involved in making that decision. However, during these discussions it was decided that Völkner would be hanged the next day, while Grace would be kept as a prisoner until the return of Patara.[48] That following afternoon on the 2 March, Völkner was killed.[49] The other two Pākehā who were captured were unharmed, and eventually escaped with the assistance of local Māori.

58. News of the killing of Völkner reached the Crown officials at Maketū and Tauranga on 6 March and Governor Grey on 14 March 1865. Most of the Pai Marire delegation left the rohe after the killing of Völkner.

59. Further skirmishes with Pai Marire adherents included the killing of James Te Mautaranui Fulloon in the Whakatāne River in July 1865.[50] Smith, as Civil Commissioner of Maketū, first learned of the Fulloon killings on 29 July. A week later, on 2 August 1865, Smith issued a warrant for the arrest of those persons allegedly involved.[51] News of the killing of Fulloon increased demands from the colonial press for a military response to Völkner and now Fulloon's killings.[52]

The invasion

60. On 2 September 1865, a 'Proclamation of Peace' was issued by Grey. The proclamation gave amnesty to Māori who had previously taken up arms against the authority of the Crown. However, it explicitly excluded those who were 'concerned in' twelve murders, the named victims of

[47] At 26.
[48] At 27.
[49] At 28.
[50] At 34.
[51] At 35.
[52] At 36.

which included Reverend Völkner and James Fulloon. It stated for those involved in the killings:[53]

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

61. On 5 September 1865 the Gazette published the Proclamation of Peace and also proclaimed a martial law over the districts of Ōpōtiki and Whakatāne. Martial law provided the Commander of the Military Forces with 'summary authority' and allowed those suspected of the killing of Völkner and Fulloon and those suspected of aiding and abetting them to be tried by court-martial.[54] This was criticised by other colonial officials at the time.

62. Colonial forces arrived in Ōpōtiki just three days after the proclamations were published, on 8 September.[55] The Colonial Defence Minister instructed the forces to land at Ōpōtiki, and seize those who had murdered Fulloon and Völkner. The Minister directed that if there was resistance 'no opportunity should in that case be lost of inflicting summary and effective punishment on the attacking force'.

63. When the force of 516 colonial troops and officers arrived in the Ōpōtiki Harbour and began landing, they made no move to communicate the terms of the peace proclamation.[56] The invasion forces lead with violence on their arrival, with the indiscriminate bombardment of a village using canons and firearms and shooting at unarmed local Māori. Many locals fled into the hinterland from the colonial forces.

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[53] At 38.
[54] At 38.
[55] At 39.
[56] At 42.

64. By day two of the occupation there had still been no apparent communication that the force had arrived 'ostensibly' to capture those involved in the killing of Völkner. According to Gilling there is no evidence of the colonial forces attempting to communicate their terms with local Māori or Pai Mārire adherents until 17 September - day nine of the occupation. Even then it appears to have only occurred following the initiative of local Māori after a messenger.[57]

65. The landing of troops was completed on day four, 11 September 1865. Upon landing, troops exchanged fire with a group of local Māori. The Patea Rangers pursued them around the estuary to the village of Pākōwhai to a pā. The pā was seized, and Native Contingent razed surrounding whare before returning to the village.[58] Once the local Māori population and Pai Mārire adherents had fled into the bush, the colonial forces began fortifying and establishing their base at Ōpōtiki.[59]

66. The colonial forces had only been supplied with limited rations due to the limited space in the transport vessels.[60] The troops ate many of the stored goods in the kāinga they occupied, as those on the ground describing eating "six meals a day" and living off the land. Material goods were either stolen or destroyed.[61] The forces secured as many as 130 horses.[62]

67. By 4 November, the commanding officer had arrested Paora Taia for Völkner's murder. On 30 December 1865, after receiving the Attorney General's opinion, the Crown released a memorandum on Courts Martial. The Crown stated that, as "peace and the authority of the law" had been restored, those accused of the murders of Volkner and others should be tried in the Supreme Court, rather than in Courts Martial.

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[57] At 40.
[58] At 44.
[59] At 45.
[60] At 50.
[61] At 52.
[62] At 51.

However, the Crown did not lift martial law from the district until January 1867.

68. From Crown breaches relating to the invasion and war of the North-eastern Bay of Plenty, Te Upokorehe suffered the following prejudice:

a. The number of casualties from the invasion was a significant percentage of the population of local Māori. An 1866 census put the Whakatōhea population at 531.[63] Therefore, there was a casualty rate of almost ten per cent. Many of those killed included warriors, leaders, and future leaders, exacerbating the harm.[64] Scores more were killed in the ensuing skirmishes in the region until the 1870s. While these numbers undoubtably include Te Upokorehe, there is no differentiation made in these census figures, and the inclusion of Te Upokorehe in various censuses from Crown officials is contested.

b. Much of the proceeds of the local economy was lost during the occupation of colonial troops.[65] The destruction of this economic base would have reverberating impacts in coming years, as local Māori faced landlessness, a lack of capital to further develop any land remaining, and in times of sickness.

Raupatu

69. Confiscation was implemented in the Bay of Plenty under the New Zealand Settlements Act 1863. The Bay of Plenty District was proclaimed under this Act, on 17 January 1866, after action by local Māori, considered to be 'rebellion'.

70. For land to be declared under the New Zealand Settlements Act 1863, the Governor needed to be satisfied that 'rebellion' had occurred by the

[63] "Upokorehe" was named as a Tribe in the 1870 Return giving the names of the Tribes of the North Island. In the 1874 and 1878 Census of the Māori population Upokorehe was named as a Hapū of Whakatōhea. In the 1881 Census, following the Waimana Re-Hearing, Te Upokorehe is named as a Principal Tribe of the Ōpōtiki District.
[64] McLellan, above n 44, at 47.
[65] At 50.

Māori whose land was to be taken.[66] Although there was no definition of what 'rebellion' constituted in the Act, McLellan considered that, looking to how the Act defined persons not eligible for confiscation:[67]

> A 'rebel' was anyone considered to have fought against the Crown, or who had encouraged or facilitated opposition to the Crown, or been involved in an attack on others or the property of others, since 1 January 1863.

71. The Peace Proclamation pardoned all acts of rebellion prior to 5 September 1865. This means the qualifying 'rebellion' by Te Upokorehe must have occurred in the confiscated lands between 5 September 1865 and 17 January 1866, when the land was declared.[68]

72. However, in the conflict that took place within this time, Rongopopoia did not act in rebellion. Crown troops had arrived on their shores and almost instantly opened fire without any context. The terms of engagement for the Crown's presence were not announced until nine days after the troops arrived.[69] As found in the *Ngāti Awa* report, there was no organised resistance to overthrow the New Zealand government from the north-eastern Bay of Plenty. Te Upokorehe were acting defensively to protect their people and whenua against what was an invasion by the Crown.

73. The New Zealand Settlements Acts Amendment Act 1866, passed in September, provided that the taking of 440,000 acres of land was 'completely valid' and incontestable. How 'rebellion' had been defined, when it was implemented in the Bay of Plenty, and whether this was justifiable could no longer be contested in court.[70]

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[66] At 76.
[67] At 76.
[68] At 77.
[69] At 77.
[70] At 78.

74. The confiscation of vast swathes of land under an extremely shaky legal premise, and one only legislatively validated post-raupatu, is clearly a breach of the Treaty.

75. Nevertheless, any land owned by, in the possession of, or occupied by those iwi, hapū, or individuals could then be declared a district under the Act and confiscated for settlement. The confiscated lands could be allocated to military settlers to settle the lands and preserve the peace.[71] In total, approximately 440,000 acres were confiscated.[72]

76. Following the raupatu, the Confiscated Lands Act 1867 allowed the Governor to create reserves on the land confiscated under the New Zealand Settlement Acts and issue confiscated land as compensation outside of or in addition to the Compensation Court process. These reserves of land could be issued to either 'friendly Natives', 'surrendered rebels', or dedicated to schools or other educational institutions for Māori or the general population. The Governor could also introduce specific conditions, restrictions or limitations on the awards provided.[73]

77. Most of the compensation in the inquiry district was allocated through sessions of the Compensation Court or through private negotiations between Special Commissioner J A Wilson and Māori claimants. As Special Commissioner of the Bay of Plenty district, Wilson was responsible for arranging the surveying of the confiscated lands in the area, as well as determining which of these lands would be retained by the Government, which would be set aside for military settlers or returned to Māori.[74]

78. By June 1867, from the original 440,000 acres of confiscated land:

[71] At 75.
[72] At 75.
[73] At 91.
[74] At 88.

a. 87,000 acres was awarded to Te Arawa for their assistance in the arrest of Fulloon's killers. Much of this land was in the rohe of Te Upokorehe, around Waiotahe and Ōhiwa.

b. A 57,000-acre block east of Ōpape had technically been 'abandoned' by the Government in an area where the confiscation had failed to be enforced.

c. 96,000 acres had been awarded back to 'rebels'.

d. 442 acres had been awarded to claimants or abandoned.

e. 38,000 acres remained to be arranged.

f. 151,558 acres was retained by the Government. About half of these 151,558 acres were provided as sections for military settlers.[75]

79. The New Zealand Settlements Act 1863 specified that land could only be confiscated to provide land for military settlers who could occupy it and offer protection against insurrection and rebellion and had to be fit for this purpose.[76] As little as 76,558 acres of the 440,000 acres taken had been allocated to military settlements by June 1867.[77]

80. From this, only 23,461 acres of the 440,000 acres confiscated were actually used to set up a military settlement. This is because the land that was taken was largely unsuited for military settlement, being rough hill country, bush, or marshes.[78] The *Ngati Awa* report concluded this excess land was taken for the purpose of Pākehā settlement over time – despite there being no allowance for land to be taken for this purpose under the Act.[79]

Compensation Court

[75] At 92.
[76] At 75.
[77] At 81.
[78] At 75.
[79] At 75.

81. Four sessions of the Compensation Court were held in the Bay of Plenty between March and December 1867. The Compensation Court was one of the mechanisms through which the eligibility of claimants to receive awards of land or payment as compensation for the loss of land under the New Zealand Settlement Acts 1863 was determined.[80]

82. The conduct of the Compensation Court fell short of the Treaty standard in many regards. It conducted business while the Crown's invasion continued. Although the day-to-day conduct of the Compensation Court is difficult to assess, as there is limited documentation around decisions, a theme of cavalier or unscrupulous Crown conduct is clear.[81] Te Upokorehe say that the Court acted in accordance with its own bias, and was not impartial.

83. Where it did make grants, the whenua was returned to individuals with the customary title purporting to be extinguished.

84. Initially, the Crown failed to appoint an experienced Judge at the commencement of the first sitting of the Ōpōtiki Compensation Court, with a single Judge presiding for most of its first sitting.[82]

85. Little time was allowed for claims to be filed. The Compensation Court sessions were often held under short notice, in areas remote from the lands claimed and the residence of many of the applicants. Sessions were also often held during times of harvest or in the midst of ongoing hostilities.[83] Members of the Upokorehe Tribe did not receive adequate notice, and had difficulty travelling to the Compensation Court sittings. This meant sittings were missed and Te Upokorehe often incurred costs.

86. During the Maketū sitting, for example, the minutes make no mention of a legal representative for Māori claimants.[84]

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[80] At 103.
[81] At 112.
[82] At 105.
[83] At 107.
[84] At 110 and 115.

87. The standards the Court applied for the return of land appear to be arbitrary. McLellan notes that despite 'surrendered rebels' being eligible for awards of land it appeared admitting involvement with Pai Mārire still often led to claims being dismissed.[85]

88. Wilson's position as both Special Commissioner and as Crown Agent compromised the independence of the Compensation Court process. Holding both positions allowed Wilson to exert an influence over the Court process which 'directly prejudiced both the claimants and the nature of the inquiry itself'.[86]

Out of Court Arrangements

89. Wilson began making arrangements for out-of-court settlements in early 1866, continuing to do so during the Bay of Plenty district Compensation Court sittings in 1867.[87] Both 'friendly' and 'rebel' Māori were eligible for these Crown grants, as long as they 'understood they lived under the laws of the Queen'.[88] Wilson established eight Native Reserves for hapū and rangatira across the Bay of Plenty district.[89]

Hiwarau and Hokianga

90. In December 1866, Wilson negotiated a reserve of the lands at Hiwarau and Hokianga Island in Ōhiwa Harbour for the 'Loyal Natives and Returned Rebels' of Ūpokorehe.[90] Hiwarau reserve was 1073 acres, and Hokianga Island constituted just over 13 acres. These areas will be addressed further below. Te Upokorehe continue to rely on the statement of claim dated 29 August 2008 on this issue.

Delayed Awards

91. The final sitting of the Compensation Court was in 1867. Awards were not made until far later. Wilson reported in 1873 that "award schedules

[85] At 112.
[86] At 130.
[87] At 91.
[88] At 91.
[89] At 129.
[90] At 99.

had been misplaced and confusion had arisen where titles had not been issued but lands had still been sold or resold without the official deeds."[91]

92. It wasn't until the end of 1874 that an initial 32 schedules of awarded lands had been presented to the House and published in the New Zealand Gazette.[92] The first grant was not issued until 1874.[93]

93. Te Upokorehe was not able to deal with their land or have their land finalised for multiple years following confiscation, difficulty which continues to the present day.

94. Hokianga Island and Hiwarau were gazetted in 1874, to be granted under Sections 4 and 6 of the Confiscated Lands Act 1867.

95. The wording of these grants belies the colonial administration's confusion in relation to Te Upokorehe identity. Hokianga Island was granted as a reserve to 'the Members of the Upokorehe Hapū'. Hiwarau was granted as a reserve to "the Members of the Upokorehe Tribe".

96. Only a small proportion of Hiwarau Reserve was capable of cultivation. The Crown reserved the best land for itself. The resulting poverty and difficulty cropping was, in part, responsible for outbreak of disease and famine that struck Te Upokorehe in the later part of the 19th century and into the 20th century.

97. Many people who were not Te Upokorehe were included in these lists of trustees and owners of Hiwarau and Hokianga reserves lists, setting in place future opposition and difficulties when the land came before the Native Land Court and in two petitions. Objections were raised by Te Upokorehe in years following but these were ignored or undermined by the Crown.

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[91] At 117.
[92] At 118.
[93] At 119.

Breach 3: Loss of Whenua

98. The claimants adopt and endorse the pleadings set out in the Wai 1092 claim.

99. In particular, Rongopopoia say that the Crown's dealings in the Tahora block have prejudiced the hapū irreparably.

100. Due to Crown purchasing and private purchasing Rongopopia are unable to enter on to whenua to protect wāhi tapu, including the following whenua and awa:

a. Te Repo Tuatara;

b. Tāruamauku;

c. Te Atuarere Awa;

d. Te Kairākau;

e. Te Taumata o Taihuka;

f. Te Kaharoa;

g. Te Oranga Marae;

h. Waiwhero Awa;

i. Waikohu.

Breach 4: Crown breaches concerning cultural and intellectual taonga

Pa Sites and Co-Management

101. The Crown has failed to protect or adequately partner with Te Upokorehe over the maintenance of pā sites Onekawa and Te Mawhai.

102. The Crown continues to own the land where these pā sites are. Te Upokorehe are relegated to a management role over their whenua.

Te Reo

103. The Crown has ignored or actively undermined the claimant's use of Te Reo Māori through its policies and practices.

104. The Crown has failed to sufficiently resource Te Upokorehe to pass down their Reo Māori.

Marae

105. Te Upokorehe have five marae, though only three currently have whare nui: Roimata, Kutarere and Maromahue.

106. The Crown has failed to fund or resource Te Upokorehe to maintain and refurbish their marae, and to rebuild Rongopopoia and Turangapikitoi Marae.

107. The Crown has failed to partner with the marae as bodies that represent the community's interests.

Tikanga

108. Through the provision of schooling, the Crown has intentionally tried to assimilate Te Upokorehe into Pākehātanga. This has the effect of undermining Te Upokorehetanga.

109. The Crown, through its policies and practices, undermined the value of mātauranga Māori of Te Upokorehe kuia and koroua and traditional knowledge holders.

110. The Crown, through its policies and practices, has undermined the traditional tikanga-based social structures of Te Upokorehe.

Economic Harm

111. Through successive policies and practice, the Crown has failed to ensure that Te Upokorehe have a sustainable economic base.

Inequitable Health Outcomes

112. The Crown failed to deliver adequate, or at least equal to Pakeha, health services to Te Upokorehe.

113. Through its policies and practices the Crown has undermined the hauora of Te Upokorehe.

Social Issues and Dislocation

114. Through successive policies and practices the Crown pushed urbanisation on Te Upokorehe communities. This undermined the traditional rohe and ahi kā roa of Te Upokorehe.

Statutory Boards and Authorities, Agencies and Companies in Crown Organisations

115. Te Upokorehe Iwi has been marginalised where representation on Statutory Boards and Authorities, Agencies and Companies in Crown Organisations.

Breach 5: The Environment and Kaitiakitanga.

Undermining Rangatiratanga Over Te Taiao

116. Te Upokorehe exercise rangatiratanga over te Taiao and fulfil their kaitiakitanga duties.

117. The Crown has since 1840, in breach of its duties, usurped and undermined the mana, the power and authority of the five Te Upokorehe hapū by enacting legislation asserting Crown ownership and control over the use, development and exploitation of their whenua and taonga katoa and failed to protect Te Upokorehe interests in their environment.

118. In addition, the Crown has devolved and delegated powers of management and control over the use, protection, development and exploitation of the environment and its resources to its agencies and local authorities, without regard for Te Upokorehe rangatiratanga and kaitiakitanga.

119. At 1840 Te Upokorehe exercised exclusive control over their environment and the resources within it, these were ngā taonga katoa and fundamental to their wellbeing.

120. Following the raupatu, and with the increase in Pākehā settlement the claimants rohe was subject to increased environmental impacts including the use, extraction and degradation of resources such as water, waterways and their fisheries, harbours including the foreshore and seabed areas and their customary saltwater fisheries, timber, forests, flora and fauna and minerals.

121. As a result, Te Upokorehe have suffered from loss and degradation of their taonga, and from the destruction of the environment to the extent that their management and kaitiakitanga has been severely compromised and their economic opportunities destroyed.

Foreshore and Seabed

122. From 1840 the Crown asserted ownership and control of the foreshore and seabed. Te Upokorehe has protested the Crown assumption of ownership and control of the foreshore and their kaimoana beds and mahinga kai.

123. In breach of Te Tiriti o Waitangi, the Crown has enacted legislation to bolster claims to ownership including:

c. The Harbour Boards Act 1878 and 1980, which prohibited reclamation work on the foreshore without an Act of Parliament;

d. Harbours Amendment Act 1910 allowed the Crown to issue licenses to occupy the foreshore for up to 21 years and by later amendment allowed leases able to be freehold;

e. The Public Works Act 1908;

f. The Native Land Act 1909;

g. Harbour License Act 1923;

h. The Territorial Sea and Exclusive Economic Zone Act 1977;

i. The Foreshores and Seabed Revesting Act 1991;

j. The Resource Management Act 1991;

k. The Foreshore and Seabed Act 2004;

l. The Marine and Coastal Area (Takutai Moana) Act 2010.

Native and Exotic Birds

124. The Crown assumed ownership and control of native birds and imported exotic species without regard to Te Upokorehe ownership and customary practices through specific legislation including:

m. The Protection of Certain Animals Act 1861;

n. The Wild Birds Protection Act 1864;

o. The Protection of Animals Act 1867;

p. The Wildlife Act 1953.

125. The legislation undermined kaitiaki obligations of Te Upokorehe who were, in some instances, unable to practice traditional hunting and access traditional food sources.

Native Fisheries and Introduced Fish

126. The Crown assumed ownership and control of the freshwater fisheries within the Upokorehe rohe without reference to the ownership and traditional uses and practices of the five Te Upokorehe hapū.

127. The Crown passed legislation to enable:

q. Game fishing;

r. The introduction of exotic species into water ways to the detriment of native species;

s. The use of water ways for timber floating and extraction, thereby destroying or damaging the habitat of eels and traditional harvesting methods of the hapū.

128. The Crown failed to protect customary fishing areas including fishing traps and weirs.

Water and Waterways

129. From 1840 the Crown sought to control the use and management of water and waterways.

130. The Crown failed to recognise the ownership of the five Te Upokorehe hapū and their customary practices in respect of their waters and waterways, many of which contain wāhi tapu.

131. In addition, the Crown failed to protect the waters and waterways, including harbours from destruction, damage, and pollution.

132. The Crown assumed ownership and control of the waters and waterways of claimant hapū by enacting legislation and delegating authority to river boards, drainage boards, and local authorities including:

t. The Public Works Acts of 1876, 1908, 1928;

u. The River Boards Act 1884;

v. The Coal Mines Amendment Act 1903;

w. The Land Drainage Act 1908;

x. The River Boards Act 1908;

y. The Soil Conservation Act 1941;

z. The Resource Management Act 1991.

Minerals

133. The Crown failed to protect Māori ownership and control of valuable mineral deposits including, coal, limestone and clays, copper, mercury and silver, hard rock, Crown minerals, and other resources.

Ohiwa Harbour

134. The Crown, through its actions and inactions have undermined the ability of Te Upokorehe to act as kaitiaki over Ōhiwa harbour.

135. The Crown and local government have not adequately or appropriately supported Te Upokorehe in their role as kaitiaki of Ōhiwa harbour.

136. The Crown and local government management of Ōhiwa harbour has degraded the moana and taonga within the moana.

137. Te Upokorehe have been prevented from engaging in traditional kaimoana kaitiaki management practices due to Crown restrictions.

Ngāhere

138. Through its actions and inactions, the Crown has degraded the ngāhere within Te Upokorehe's rohe.

Taonga Species

139. The Crown has not provided adequate or appropriate protection of taonga species within the rohe of Te Upokorehe.

140. The Crown has harmed taonga species and the wairua of te Taiao through the introduction of pest species.

141. The Crown did not consult or partner with Te Upokorehe when introducing pest species to te Taiao.

142. The Crown has not adequately partnered with Te Upokorehe when it undertakes remediation efforts to regenerate te Taiao.

Wāhi Tapu and Heritage

143. Crown heritage management have not been adequate or appropriate to facilitate the exercise of Te Upokorehe kaitiakitanga over wāhi tapu and heritage sites.

144. Through Crown action and inaction, wāhi tapu have been insufficiently protected.

Fourth Limb of Claim: Management, Social and Economic Issues and Harm to Cultural Identity

Pa Sites and Co-Management

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146. The Crown continues to own the land where these pā sites are. Te Upokorehe are relegated to a management role over their whenua.

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148. The Crown has failed to sufficiently resource Te Upokorehe to pass down their Reo Māori.

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150. The Crown has failed to fund or resource Te Upokorehe to maintain and refurbish their marae, and to reestablish Rongopopoia and Turangapikitoi Marae.

151. The Crown has failed to partner with the marae as bodies that represent the community's interests.

Tikanga

152. Through the provision of schooling, the Crown has intentionally tried to assimilate Te Upokorehe into Pākehātanga. This has the effect of undermining Te Upokorehetanga.

153. The Crown, through its policies and practices, undermined the value of mātauranga Māori of Te Upokorehe kuia and koroua and traditional knowledge holders.

154. The Crown, through its policies and practices, has undermined the traditional tikanga-based social structures of Te Upokorehe.

Economic Harm

155. Through successive policies and practice, the Crown has failed to ensure that Te Upokorehe have a sustainable economic base.

Inequitable Health Outcomes

156. The Crown failed to deliver adequate, or at least equal to Pakeha, health services to Te Upokorehe.

157. Through its policies and practices the Crown has undermined the hauora of Te Upokorehe.

Social Issues and Dislocation

158. Through successive policies and practices the Crown pushed urbanisation on Te Upokorehe communities. This undermined the traditional rohe and ahi kā roa of Te Upokorehe.

Statutory Boards and Authorities, Agencies and Companies in Crown Organisations

159. Te Upokorehe Iwi has been marginalised where representation on Statutory Boards and Authorities, Agencies and Companies in Crown Organisations.

Kiwi Recovery

160. In addition, Te Upokorehe, inclusive of Rongopopoia Hapū, are restoring kiwi to Waiotahe valley. Te Upokorehe have a team who maintain bait stations within a 260ha area in the Waiotahe Valley, and carry out pest control through removing stoats, ferrets, kiore, and possums.

161. The claimants say that they are actively prevented from expanding such undertakings due to a lack of funding and resources.

Relief

162. The claimants seek the following from the Tribunal:

a. A finding that their claim is well-founded.

b. A recommendation that the Crown apologise to Rongopopoia Hapū specifically for the prejudice created through Crown breaches of te Tiriti.

c. A recommendation that the Crown provide measures which actively recognise the rangatiratanga and autonomy of Rongopopoia Hapū.

d. A recommendation that the Crown return land within the claimants rohe that is vested in local authorities or Māori trustee within the rohe of Rongopopoia Hapū to to Rongopopoia.

e. That the Crown protect and preserve wāhi tapu and sites of significance within the claimants' rohe.

f. A recommendation that compensation be paid directly to Rongopopoia.

g. A recommendation that the Crown make provision for equitable participation of Te Upokorehe Iwi on all statutory boards and authorities, agencies and companies in Crown organisations which operate with their rohe to ensure that the role and mana of Te Upokorehe, and its constituent hapū, are not undermined within participation and voting processes on these bodies.

h. A recommendation that the Crown work alongside Rongopopoia to rebuild and restore Rongopopoia marae.

i. A recommendation that the Crown provide funding for Rongopopoia to hui on further relief that would be appropriate.

j. Any other relief the Tribunal deems appropriate.

Dated: 30 January 2024

Bryce Lyall
Counsel for the claimants

Hannah Swedlund

Bryce Lyall, Barrister, acts for the claimants on the basis of direct instructions.

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