

IN THE WAITANGI TRIBUNAL

WAI 1750

WAI 1789

IN THE MATTER OF

The Treaty of Waitangi Act  
1975

AND

IN THE MATTER OF

The North Eastern Bay of  
Plenty Inquiry (Wai 1750

AND

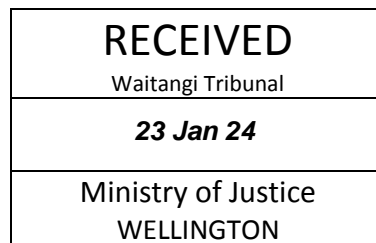
IN THE MATTER OF

A claim by Bella Savage on  
behalf of the descendants of  
Hineato Savage (Wai 1789)

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**THIRD AMENDED STATEMENT OF CLAIM  
23 JANUARY 2024**

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## **MAY IT PLEASE THE TRIBUNAL**

1. This amended statement of claim (“ASOC”) is filed on behalf of the Wai 1789 claimant Bella Savage (“the claimant”), which is a claim brought on behalf of the descendants of Hineato Savage (“Savage Whānau”).
2. The Savage Whānau whakapapa to Ngāi Tamahaua hapū of Te Whakatōhea, Ngā Ariki and Te Whānau a Apanui with strong whakapapa connections to Te Whānau a Harāwaka.
3. This claim fully particularises the Crown breaches of Te Tiriti o Waitangi 1840 (“Te Tiriti”) against the Savage Whānau.

## **THE CLAIM**

4. This claim pleads that the Crown through its legislation, practices, policies, acts and omissions, coupled with its representatives and agents; actively caused and facilitated the alienation of the claimants whānau and hapū land and resources. In doing so, the Crown, in breach of Te Tiriti, diminished, destroyed and completely prejudiced the claimant, the Savage Whānau and their hapū and iwi, including their
  - a) uri;
  - b) whenua;
  - c) mana;
  - d) wairua;
  - e) kāinga;
  - f) taonga;
  - g) mana whenua;
  - h) mana moana;
  - i) rangatiratanga;
  - j) kaitiakitanga;
  - k) mahinga kai and kāpata kai;
  - l) resource base;

- m) tikanga;
- n) mātauranga;
- o) wāhi tapu;
- p) Hauora including physical and mental well-being; and their economic wellbeing and asset base.

5. This claim further particularises the claimant's (meaning Te Whānau a Harāwaka) interests in relation to the Tunapahore land blocks which border the Wai 1750 Inquiry boundary and are also the subject of the Wai 78 Ngāi Tai claim.<sup>1</sup>

## **THE CLAIMANT AND TE TIRITI**

6. The claimant and the Savage Whānau are tangata whenua and mana whenua and have been prejudicially affected by the Crown and its conduct including that of its agents and are therefore eligible to bring this claim.<sup>2</sup>

7. The claimant and the Savage Whānau whakapapa to the following lands within the Inquiry:

- a) Ōpape 3A1B (Balance) Sections 2, 3, and 4;
- b) Whakapaupakahi Blocks;
- c) Takaputahi Blocks;
- d) Ōpōtiki Township Blocks
- e) Kapuarangi Blocks; and
- f) Waioeka 305B.

8. The Savage Whānau, through their whakapapa to Te Whānau a Harāwaka, can whakapapa to the entire Tunapahore block.

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<sup>1</sup> Wai 78 Amended statement of claim dated 30 November 2023.

<sup>2</sup> Treaty of Waitangi Act 1975, s 6.

9. Prior to title investigations, Native Land Court dealings, and the determination of absolute ownership, the claimant's tūpuna held mana in these lands along with their whānaunga. These tūpuna included Hineato Merehana Savage, Mereana Makawa, Hoera Tere and Pokere Taua.

## **TE TIRITI O WAITANGI AND ITS PRINCIPLES**

10. The Crown has a Te Tiriti duty to actively protect the claimant and the Savage Whānau (and their hapū) lands, waters, resources and taonga. This is one of the most important principles of Te Tiriti.
11. Both the English and Māori versions of Te Tiriti included specific guarantees that Māori ownership and control of their whenua would be protected. In the words of the Court of Appeal, the Crown has a duty to actively protect Māori as tangata whenua in the use of their lands and waters to the fullest extent practicable. In particular, the Crown has a duty actively to ensure that Māori as tangata whenua are allowed to keep their land for as long as they wish, that they retain an endowment sufficient for their wellbeing and that they receive effective government aid to fully develop their land and property.<sup>3</sup>
12. Further, the principle of partnership imposes upon the Crown the duty to act with the utmost good faith, fairly, reasonably and honourably in the spirit of cooperation with Māori as tangata whenua.<sup>4</sup>

## **CROWN BREACHES**

13. The nub of this claim is simple: despite its' promises, the Crown completely failed Māori in preserving and protecting their ownership, possession and development of their whenua and all other taonga.

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<sup>3</sup> Waitangi Tribunal *Te Rauapatu O Tauranga Moana Report on the Post Rauapatu Claims* (Wai 215, 2010) at 21-22.

<sup>4</sup> At 21-22.

14. The Crown deliberately implemented underhanded, illegitimate, and fraudulent practices to steal, confiscate and alienate the Savage whānau, hapū and iwi from their whenua and other taonga. This whenua remains alienated from its rightful owners today.
15. Any whenua that was retained was generally unproductive.
16. Crown policies prevented the full, proper utilisation and development of their whenua and other taonga.
17. Further, Crown introduced legislation, policies and practices actively facilitated the alienation of their whenua and other taonga.
18. The forced implementation of European law and legislation upon Māori affected their traditional customary land tenure, and led to the division, individualisation, and loss of their whenua and other taonga.

#### **NATIVE LANDS ACT AND NATIVE LAND COURT**

19. The Native Land Act 1862, and its subsequent Acts and Amendments were significant instruments used to alienate Māori from their whenua and other taonga.
20. The Crown did not consult with Māori as the tangata whenua during the establishment of the Native Land Court.
21. The Native Land Act 1862 facilitated the individualisation of Māori customary land title, thereby allowing the transfer of Māori whenua to Pakeha through sale and purchase transactions.<sup>5</sup>

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<sup>5</sup> Jane Luiten *Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands* (Wai 1750, #A12, 2021) at 15.

22. The Native Land Court, established under the Native Land Act 1865, played a pivotal role in effecting the alienation of Māori ownership and control of Māori whenua.
23. Unlike Pākeha land, particularly that in England, traditional customary Māori land tenure was communal and carried obligations to the wider community. These traditions were lost to land individualisation, which was the norm in England.
24. Additionally, the Native Land Court proceedings imposed substantial financial burdens on hapū, encompassing court fees, legal expenses, travel costs, and hearing-related expenditures, often repaid through the relinquishment of land.
25. The enactment of the Native Lands Act legislation and the Native Land Court, along with the subsequent alienation of Māori whenua facilitated by these instruments, constitutes a breach of Article 2 of Te Tiriti and the Crown's duty to actively protect Māori whenua, resources, and taonga.

## **CLAIMANT'S SPECIFIC LAND ALIENATION**

26. The following land blocks and interests were alienated from the claimant, the Savage whānau and hapū as a result of Crown legislation, policies and practices.

## **ŌPŌTIKI**

### *Ōpōtiki Township Allotments 340 and 343*

27. The claimant's tūpuna, Taina Savage, had a boatbuilding shed on the Ōpōtiki Township Allotments 340 and 343. Taina Savage built boats for local chiefs, Mokomoko, Hira Te Popo and hapū of the district including Tuhoe.

28. In 1866, Ōpōtiki Township Allotments 340 and 343 underwent confiscation and have not been restituted to the claimant and their whānau. Subsequently, the land was earmarked as a recreation reserve in 1940 and assumed increased management by the Crown in the 1970s.
29. Between 1970 and 2002, it appears that the reserve was vested in the Ōpōtiki District Council. Decisions pertaining to the land were executed without consultation or consent from Ngāi Tamahaua during this period.

### ŌPAPE LAND BLOCKS

30. The Ōpape Native Reserve (“the reserve”) (20,290 acres) was established to accommodate Whakatōhea hapū deemed to be in rebellion.<sup>6</sup>
31. The displaced hapū of Ngāti Ira, Ngāti Patumoana, Ngāti Ngahere, and Ngāi Tamahaua, were forced to leave their ancestral lands at Waiotahe, Paerata, Hikutaia, Pakowhai, and Waioweka - and were relocated to the reserve.<sup>7</sup>
32. The boundaries of the reserve were:

Bounded on the North by the sea; on the East by a line from Point Titoi to Tarakeham thence to Tawatihitihi, thence by a straight line running through Puketeko to the Southern boundary of the confiscated block, on the West by Waiawa River [sic] from its mouth to the point where it passes between Makeo and Wakahau Hill to the southern boundary of the confiscated block; on the South by the boundary of the confiscated block.<sup>8</sup>
33. The Crown did not address the distribution of the reserve among Whakatōhea hapū until 1879. Surveyed in 1880 by W. Tole, the subdivision and allocation of blocks to hapū was finalised in 1883.<sup>9</sup>

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<sup>6</sup> John McLellan *Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874* (Wai 1750, #A3, 2020) at 34-35. at 87.

<sup>7</sup> Ranginui Walker *Opotiki-Mai-Tawhiti: Capital of Whakatōhea* (Penguin Books, Auckland 2007) at 34.

<sup>8</sup> At 33.

<sup>9</sup> At 135.

34. The northern half of the reserve taking in the coastal platform was cut into elongated blocks, ostensibly to give each hapu access to the coast.
- a) Ōpape Block 1 and 11 was assigned to Ngāi Tamahaua;
  - b) Ōpape Block 2 and 10 was assigned to Ngāti Ngahere;
  - c) Ōpape Block 3 and 12 was assigned to original owners, Ngāti Ruatakena and Ōpape Block 3A was assigned to Ngāti Muriwai;
  - d) Ōpape Block 4 and 7 was assigned to to Upokorehe;
  - e) Ōpape Block 5 and 9 was assigned to Ngāti Patumoana; and
  - f) Ōpape Block 6 and 8 was assigned to Ngāti Ira.<sup>10</sup>
35. In 1904 new legislation empowered the Native Land Court to determine the legal titles to the reserve subdivisions. From February 1904 the Court allowed partition applications and ordered lists of owners' names to be handed in.<sup>11</sup> The partitions made by the Court in 1904 were formally validated at a further Native Land Court sitting in 1907.<sup>12</sup>
36. The first alienations of the Ōpape Native Reserve occurred around 1916, post the title validation in 1907. The 1913 Native Land Amendment Act barred the Crown from acquiring any portion of the reserve. In 1918, leasing arrangements commenced, indicative of a shift in land-use dynamics. Economic hardships in the 1920s led to partitions being leased or sold, subject to District Māori Land Board approval. Ownership transfers occurred through gifting, requiring Waiariki District Māori Land Board approval.<sup>13</sup>

#### *Claimant's Interests*

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<sup>10</sup> Jane Luiten *Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands* (Wai 1750, #A12, 2021) at 85 - 87.

<sup>11</sup> At 123.

<sup>12</sup> At 123-124.

<sup>13</sup> *Te Tāwharau o Te Whakatōhea Ngā Whenua i Whakabokia Mai i Te Raupatu Compensation Court, out-of-court settlements and lands returned to Whakatōhea – nineteenth and twentieth century* at 25-28.



37. Prior to the 1960s, there were multiple owners in various Ōpape land blocks, including the claimant's tūpuna. The division of shares amongst multiple owners originated from the original title investigations and was facilitated by the Native Land Court.
38. In or about the 1960s, a successor to shares in Ōpape managed to attain, by succession and purchase, a significant number of the shares in Ōpape lands.
39. Upon receiving the title, the successor applied to the Native Land Court to consolidate and partition the shares and then sell them to settlers. This specific successor was assisted by the Māori Affairs Act 1958 which is not premised on the retention of Māori land.

*Ōpape Blocks – 3a 1b sec 2, 3a 1b sec 3, 3a 1b sec 4 and Waioeka 305B*

40. Mereana Makawa gifted her shares in Ōpape 3a 1b sec 2, 3a 1b sec 3, 3a 1b sec 4 and Waioeka 305B (“these land-blocks”), to claimant's father, Samuel Joseph Savage and her uncle. Initially, Mereana's will had designated these land-blocks to be gifted to Pokere Taua, but Pokere had unfortunately passed away before inheriting them.
41. After Mereana Makawa's death, the claimant's father and uncle's right to succession was frustrated by a Māori Land Court application to amalgamate shares in these land blocks. They were both unaware of their legal rights until the latter stages of their life.
42. The claimant alleges through Crown legislation these land-blocks were succeeded by persons that were not legally entitled.
43. Consequently, the Savage Whānau physical and spiritual connections to these land blocks were severed. The effects for future generations included a diminished identification with these land blocks and a

diminished ability to benefit from the physical, spiritual, and economic value of these land blocks.

## TAKAPUTAHI LAND BLOCKS

44. The Savage Whānau whakapapa to the Takaputahi Land Blocks through Ngāi Tamahaua and Te Whānau a Harāwaka.
45. The Takaputahi block is located on the eastern end of the inquiry district adjacent to the Motu River.
46. In December 1895, a title investigation hearing into the Takaputahi block (32,857 acres) was held at Ōpōtiki, under Judge Scannell.<sup>14</sup> Those who claimed interests in the land were Whakatōhea generally; including Ngāti Rua, Ngai Tamahuau, Te Upokorehe, Nga Tāmoko and Ngāti Patu. Additionally, Ngāti Porou, Te Whānau-ā-Apanui, and Ngā Pōtiki asserted interests in the land.<sup>15</sup>
47. The Judge found Ngāi Tai evidence contradictory, inconsistent, and improbable, while Whakatōhea evidence, though contradictory, was considered in conjunction with the testimony of Ngāi Tai and Whānau-ā-Apanui. The conclusion favored Whakatōhea and Whānau-ā-Apanui, with a defined boundary line awarded to each.<sup>16</sup>
48. Ngāi Tai appealed, arguing various grounds, including the exclusive location of Whakatōhea lands to the west of Waiaua and the impact of the Whitikau no. 3 decision on the ownership of Takaputahi. The appeal in 1897-98, heard by Judges Edger and Johnson with Native Assessor Hemi Erueti, overturned the previous decision, awarding the entire block to Ngāi Tai.<sup>17</sup>

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<sup>14</sup> Jane Luiten *Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho'* (Wai 1750, #A25, 2022) at 263.

<sup>15</sup> At 263-264.

<sup>16</sup> At 278.

<sup>17</sup> OMB no. 16, 26 January 1898, pp. 42-44.

*Incorporation of Takaputahi*

49. In September 1907, an application for the incorporation of the title to Takaputahi (32,857 acres) was presented by Haka Tautuhi and other owners at the Whakatāne Court.<sup>18</sup>
50. The purpose of the incorporation was to lease the title, and with no dissenting voices, the order of incorporation was granted and gazetted in October 1907.<sup>19</sup>
51. In August 1908, the government confirmed the leases (in the form of the Waiariki Maori Land Board), acting for the Takaputahi block committee, following applications by the tenants in December 1907 and January 1908. There were seven leases for 30-year terms over an area comprising 12,518 acres.<sup>20</sup>
52. The proposed rent by the tenants started at six pence per acre for 10 years, doubling over the next 20 years, and they wanted a 20-year renewal at five percent of the land's value. However, in 1911, a valuer found that the actual annual rent was higher than proposed, suggesting a low initial valuation of the land. The tenants thought the land was worth one amount, but it was actually valued at more than double that in 1908, making the leases flawed.<sup>21</sup>
53. The Board acknowledged the low rents but approved them, deviating from the recommended rate.
54. In April, the owners of Takaputahi complained to Native Minister Carroll that the Government Board had not been paying them their share of rents even though it had made three distributions of rents to Māori at Opotiki since the leases began. The lessees eventually went bankrupt, and

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<sup>18</sup> Bruce Stirling *Twentieth Century Land Legislation and its Impacts North Eastern Bay of Plenty Inquiry* (Wai 1750, #A32, 2023) at 443.

<sup>19</sup> At 32.

<sup>20</sup> At 81.

<sup>21</sup> At 81-82.

by August 1911, the leases were cancelled, paving the way for the Crown's purchase.<sup>22</sup>

55. The Crown intended to buy Takaputahi in July 1910, and by June 1911, a purchase agreement was reached, pending the finalization of the price. In August 1911, owners sought £38,000 for the land and timber. However, in November 1911, the government valuation came out at £25,000.<sup>23</sup>
56. Eventually, the Crown purchased Takaputahi for £49,000 in March 1912.<sup>24</sup>
57. The owners faced difficulties in receiving their purchase proceeds from the Crown, similar to their earlier challenges with rent payments. Hoera Katipo sought additional compensation for survey fees but was declined. The purchase proceeds were delayed, and some funds for minors were held by the Public Trustee.
58. The Crown's involvement in leasing, valuation discrepancies, delays in purchase proceedings, and denial of compensation collectively contributed to the alienation of Māori whenua in regard to Takaputahi, reflecting a breach of its duties outlined in Te Tiriti.
59. The Crown failed to protect the claimant's interests in the Takaputahi land block amounting to a breach of Article 2 of Te Tiriti and the Crown's duty to actively protect Māori whenua, resources and taonga.
60. The Crown's actions contributed to the alienation of Māori land, as traditional ownership structures were replaced by Eurocentric leasing arrangements that ultimately led to the Crown's acquisition.

## **TUNAPAHORE LAND BLOCKS**

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<sup>22</sup> At 84-85.

<sup>23</sup> At 85-86.

<sup>24</sup> At 86.

61. The claimant and her whānau whakapapa to Te Whānau a Harāwaka, a hapū of Te Whānau a Apanui, with whakapapa interests to the entire Tunapahore Land Blocks.
62. Te Harāwaka is the son of Apanui-Ringamutu and his second wife, Te Whāki of Ngāitai. Te Harāwaka is said to be the only one of his siblings who remained at Tunapahore after his siblings moved east along the coast.<sup>25</sup>

*The disputed boundaries*

63. Te Whānau a Harāwaka guard the western boundary of Te Whānau a Apanui and share a border with Ngāi Tai. Te Whānau a Harāwaka inhabit the lands and seas commonly known and referred to as Hawaii.
64. The boundary of Te Whānau a Harāwaka on the coast is called Parahaki (known as Te Taumata o Apanui). The boundary between Te Whānau a Harāwaka and neighbouring hapū Ngāi Tai is a zigzag one; from Te Taumata o Apanui.
65. The boundary between Te Whānau a Harāwaka and Ngāi Tai has historically been contested and is where the Tunapahore land blocks are situated.
66. The Tunapahore block (5,449 acres) extends along the coast at Hawaii, extending from the Torere block in the west to the Houpoto Whituare block in the east, and inland to the Kapuarangi block.<sup>26</sup>
67. In the 1860s Crown officials visiting Ngāi Tai observed the ongoing boundary dispute between Ngāi Tai and Te Whānau-ā-Apanui.<sup>27</sup>

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<sup>25</sup> At 447.

<sup>26</sup> At 443.

<sup>27</sup> At 446.

68. Strategic chiefly marriages such as that of Apanui often featured between groups on the edges of tribal territories. During the time of Te Whānau a Harāwaka, he married three Ngariki women which fostered peaceful coexistence. However, in the eighteenth century, Tunapahore conflict resulted in the defeat and exile of Ngariki, leaving Te Whānau a Harāwaka in control.<sup>28</sup>
69. Ngāi Tai remained at Tunapahore for two more decades until the 1850s conflict with Te Whānau-a-Apanui over disputed cultivation boundaries and a marital dispute. Battles from 1856 to 1858 ensued when Ngāi Tai refused to return land to Te Whānau-a-Apanui.<sup>29</sup>
70. In 1858, lay preacher Hakaraia proposed relocating both parties – Ngāi Tai to Torere and Te Whānau-a-Apanui to Maraenui. Hori Kawakura of Te Whānau a Harāwaka opposed, leading Ngāi Tai to briefly depart before returning a few years later.<sup>30</sup>
71. Ngāi Tai, Te Whānau-a-Apanui and Te Whānau a Harāwaka were said to have remained at Tunapahore until their dispute re-emerged in the Native Land Court. However, numerous censuses undertaken by Resident Magistrate Brabant during this time recorded Ngāi Tai as resident at Torere, while Hawai was occupied by Te Whānau a Harāwaka and others of Te Whānau-a-Apanui.<sup>31</sup>

*Customary Interests and Title Investigations, 1885-1891*

72. The Tunapahore blocks have a complex history characterised by contested land titles, legal disputes, and intricate partitioning which span close to 60 years. The complexity arises from the number of contesting groups, conflicting customary interests, legal processes, and evolving land management structures.

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<sup>28</sup> At 448.

<sup>29</sup> At 448.

<sup>30</sup> At 448.

<sup>31</sup> At 448-449.

73. From 1885 - 1945 the Tunapahore blocks were heavily contested between Te Whānau-a-Apanui, Te Whānau a Harāwaka and Ngāi Tai in the Native Land Court, the Appellate Court, a Royal Commission, the Native Affairs Committee, and the Native Land Commission, resulting in numerous title transfers.
74. Bruce Stirling sets out some of the history of the legal battles in his Twentieth Century Report.<sup>32</sup>

*Customary Interests and Title Investigations, 1885-1891*

75. The Tunapahore block was initially surveyed in response to the request of Ngāi Tai in 1885.<sup>33</sup> Wiremu Kingi (representing Ngāi Tai claimants) asserted claim to the entire block (5,449 acres). However, this claim was contested by Te Whānau a Harāwaka.<sup>34</sup>
76. Te Whānau a Harāwaka presented their case through Hairama Haweti, arguing that their conquest of Ngariki established a "permanent occupation" of Tunapahore.<sup>35</sup>
77. The Court encountered conflicting evidence from all parties, making it challenging to assess the merits of the presented evidence. Both Ngāi Tai and Te Whānau-a-Apanui claimed to have conquered Ngariki. The Court, however, deemed the Ngāi Tai claim as the "most probable," emphasizing the distinct identity of Ngariki from Ngāi Tai. In contrast, Te Whānau-a-Apanui contended that Ngariki were "their own flesh and blood"<sup>36</sup>
78. Considering Ngāi Tai occupation of the western end and Te Whānau-a-Apanui presence in the east, the Court noted the absence of a defined

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<sup>32</sup> Stirling, above n 18, at 444.

<sup>33</sup> At 449.

<sup>34</sup> At 449.

<sup>35</sup> At 450.

<sup>36</sup> At 450.

boundary between them. Despite little evidence of occupation, the Ngariki claim (represented by Huhana Wepiha) was acknowledged as "kept alive".<sup>37</sup>

79. The Court awarded the land west of the Waiomuri stream to Ngāi Tai, while the balance was awarded to Te Whānau a Harāwaka and Te Whānau-a-Apanui, as well as those of Ngariki represented by Huhana.<sup>38</sup>
80. The southern half of the block was awarded to Ngāi Tai while the northern half, including the kāinga of Hawai, was designated to Te Whānau o Apanui.
81. The court hoped that both sides would accept the decision as a fair settlement to a longstanding and contentious issue.
82. The awards can be summarised as follows:

**Tunapahore Title 1885**

Title	Acres	Owners	Notes
Tunapahore 1	2,000	220	Ngaitai award, being portion west of Waiomuri Stream
Tunapahore 2	9	1	Urupa; vested in Wi Kingi
Tunapahore 3	3,440	100	65 Te Whanau-a-Harawaka owners 35 Te Whanau-a-Apanui and Ngariki owners Being portion east of Waiomuri Stream. Later surveyed as 3,770 acres

*Tunapahore 3 list of owners*

83. The list of Tunapahore 3 owners was not submitted to the Court when title was awarded in February 1885. The Court faced challenges reconciling the conflicting claims of Ngariki and Te Whānau a Harāwaka, as the two groups disagreed on their respective takes. Agreement on a unified list proved difficult due to these disagreements.<sup>39</sup>

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<sup>37</sup> At 450.

<sup>38</sup> At 450.

<sup>39</sup> At 451-452.



84. In June 1888 members of Te Whānau-a-Apanui and Te Whānau a Harāwaka applied to the Court to hear Tunapahore 3 to allow a list of names to be given.<sup>40</sup>
85. Hairama Hawete (Te Whānau a Harāwaka) explained an owners list had not been given in 1885 due to internal disputes.<sup>41</sup>
86. Te Whānau a Apanui request for a rehearing of Tunapahore was rejected due to the absence of the list of owners. Despite attempts to compile such a list, opposition between Te Whānau a Apanui and Ngariki hindered any progress.<sup>42</sup>
87. In January 1891 the Court issued a “special panui” for a list of owners for Tunapahore 3. On 16 February 1891 Valentine Savage (Te Whānau a Harāwaka) submitted a list of Te Whānau a Harāwaka names with no objections.<sup>43</sup>
88. However, when Haoni Kere presented a Ngariki list, objections were raised. Savage argued that Ngariki had come under the authority of Te Whānau a Harāwaka in the previous court award, creating complications.<sup>44</sup>
89. Justice Gudgeon expressed frustration with the refusal to submit timely lists, placing the blame on Ngariki. He refused to accept the Ngariki list and suggested a rehearing. The Court adjourned, urging Te Whānau-a-Apanui to produce a list in agreement with Ngariki.<sup>45</sup>
90. The next day, a list of Te Whānau-a-Apanui and Ngariki names were submitted without objection, finalising the ownership list after six years. The list comprised 65 Te Whānau a Harāwaka names and 35 Te Whānau-

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<sup>40</sup> At 452.

<sup>41</sup> At 425-453.

<sup>42</sup> At 425-453.

<sup>43</sup> At 425-453.

<sup>44</sup> At 425-453.

<sup>45</sup> At 452-453.

a-Apanui and Ngariki names, allowing Te Whānau a Harāwaka to proceed with their rehearing application.<sup>46</sup>

*Rehearings, 1891-1898*

91. Following the confirmation of the list of owners for the Tunapahore 3 block in 1891, a series of petitions and rehearing requests on the title to the Tunapahore block ensued between 1891-1898.<sup>47</sup>
92. In 1891 Ngāi Tai promptly petitioned against their exclusion from Tunapahore (and Kapuarangi), however their efforts were largely ignored and instead turned to political lobbying.<sup>48</sup>
93. In 1898, following petitions led by Kopu Erueti of Te Whānau a Apanui and Hairama and Taina Aweti of Te Whānau a Harāwaka, coupled with a legislative change permitting rehearing in 1895, the Native Appellate Court awarded the entire Tunapahore block to Te Whānau-a-Apanui and Te Whānau a Harāwaka. Emphasis was placed on occupation rights. The Haweti whānau faced their own challenges, including disagreement over land allocation and legal disputes.<sup>49</sup>
94. Ngāi Tai subsequently protested this decision.
95. Despite ongoing disputes and legal issues, the land titles were finalised in 1898 as follows:

**Tunapahore Title 1898**

Title	Acres	Owners	Notes
Tunapahore 1	480	2	Area occupied by Haweti whanau
Tunapahore 2 & 3	4,969	288	Te Whanau a Apanui and Te Whanau a Harawaka
Tunapahore 4	0.25	3	Urupa (Waipae) within Tunapahore 1

<sup>46</sup> At 454-455.

<sup>47</sup> At 454-462.

<sup>48</sup> At 454-455.

<sup>49</sup> *AJHR*, 1915 Session J, G-06b.

*Rehearings, 1898-1903*

96. Ngāi Tai sought a rehearing due to their exclusion from Tunapahore (and Kapuarangi).<sup>50</sup>
97. In 1901 the Native Land Laws Amendment Act led to the appointment of a Royal Commission to investigate Tunapahore and other land blocks. Wi Pere, an Eastern Māori MP, was believed to have influenced the outcome in favour of Ngāi Tai.<sup>51</sup>
98. In 1903 Judge Seth Smith and Hone Heke split the block down the middle again, awarding to Ngāi Tai the southern half all the way to the Hawai river.<sup>52</sup>
99. This meant that the kāinga of Hawai inhabited by Te Whānau a Harāwaka, their existing cultivation, and urupa such as Waipae, were all awarded to Ngāi Tai.
100. The awards were as follows:

**Tunapahore Title 1903**

<b>Title</b>	<b>Acres</b>	<b>Owners</b>	<b>Notes</b>
Tunapahore North	2,628	171	Te Whanau a Harawaka award.
Tunapahore South	2,821	278	Ngaitai award. Appealed 1914. See ML 2720

101. The contentious partition of Tunapahore prompted petitions and drew the attention of Members of Parliament Apirana Ngata and Sir James Caroll. Their involvement sought to secure an area south of the Hawai River for Te Whānau a Harāwaka cultivations. In 1915, both members served on the Native Affairs Committee, which recommended legislation dividing Tunapahore amongst the three contesting groups.<sup>53</sup>

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<sup>50</sup> Stirling, above n 18, at 463.

<sup>51</sup> At 463-464.

<sup>52</sup> At 465-466.

<sup>53</sup> *AJHR*, 1915 Session J, I-03.

*Tunapahore South B2, 1936-1945*

102. The Government enacted the Native Purposes Act 1938, which included a clause to address Tunapahore. The Act mandated the appointment of a Commission comprising three Native Land Court Judges to resolve the land ownership issue.<sup>54</sup>
103. The Tunapahore Commission was appointed in mid-1944 and gave its decision in November 1944. Ngāi Tai was awarded a portion of Tunapahore based on their ancestral rights and occupation, specifically west of the Waipuna Stream.<sup>55</sup>
104. The Commission finalised the titles in February 1945. Ngāi Tai received 850 acres, marking the end of a sixty-year legal battle over Tunapahore South B2.<sup>56</sup>
105. Te Whānau a Harāwaka faced the challenge of fitting into Tunapahore B2B (1,679 acres) and paying the full price for the loss incurred by the award to Ngāi Tai.
106. Dissatisfaction with the 1945 outcome led to petitions in 1956, seeking further inquiries. However, both petitions faced resistance from authorities emphasising the need for finality.<sup>57</sup>

**Individualisation of Tunapahore Land Blocks**

107. The claimant alleges Crown legislation, policies, practices and Crown agents have led to the following Tunapahore land blocks and interests being alienated from Te Whānau a Harāwaka:

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<sup>54</sup> Stirling, above n 18, 497-498.

<sup>55</sup> At 498.

<sup>56</sup> At 502-503.

<sup>57</sup> At 506-508.

*Tunapahore 3*

108. The claimant alleges that the sale of Tunapahore 3 was conducted through fraudulent means. It is asserted that decisions rendered in this matter were influenced by deficiencies in the evidence presented to the Court, and a significant volume of evidence was not disclosed at the time when the determination to divest the land was made.
109. The claimant's whanaunga had substantial interests in Tunapahore 3 which were ignored, including her father, Samuel Savage and, John Iharaira Savage. The decision to ignore the claimant's whanaunga despite having interests in Tunapahore land blocks is a reoccurring theme whilst investigating land titles.
110. Tunapahore 3 (formerly Tunapahore South A (188 acres) and Tunapahore 1A2 (949 acres) were amalgamated in July 1996 and then purchased by Ms. Bigwood who eventually sold the land to Europeans.<sup>58</sup>
111. Members of the Savage Whānau and others of Te Whānau a Harāwaka sought to partition out their interests to define their interests in a title based on lands they had been cultivating and farming for at least 60 years.<sup>59</sup>
112. The first issue with the partition application was that it was heard in Rotorua but the land and most of the owners lived in Opotiki. The owners felt unable to adequately present their case in Rotorua.<sup>60</sup> A plan regarding the partition was not made available until a few days earlier, leaving objectors in the dark.
113. The Court proceeded at Rotorua in October 1965. The Savage Whānau focused on 259 acres in Tunapahore 1A1 and 186 acres in Tunapahore South A, areas long occupied by their whānau. Their evidence included a

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<sup>58</sup> At 520.

<sup>59</sup> At 520.

<sup>60</sup> At 520.

history of their occupation and the sources showing their rights to occupy the land.<sup>61</sup>

114. After a full day hearing the case, the Court adjourned to Opotiki to enable further evidence to be called there and to provide objectors more time to prepare their case.<sup>62</sup>

115. The case did not resume at Opotiki until June 1966, when the Court discussed a possible settlement. The settlement involved a payment, as the area for partition exceeded the interests of those wanting to make the partition to those not involved. A sum of £2,300 was mentioned, with a £500 deposit and a mortgage of £1,800 over five years initially proposed.<sup>63</sup>

116. The final proposal for partition and amalgamation was ready for the Court in July 1966. The settlement involved a payment, and outstanding matters such as costs and lists of owners were resolved.

117. Costs included £52 10s. awarded against the applicants (amalgamated Tunapahore 3) and £57 15s. as a general award against other owners (Tunapahore 4). The payment was revised to £1,725 in cash, and the Court ordered the amalgamated titles.<sup>64</sup>

118. There were forty owners in the 9,300 shares held in Tunapahore 3. Dulcie Bigwood (daughter of Peter Savage) held nearly half the title (4,451 shares) while the remainder were divided up amongst the Haweti, Savage, Ganlet, Waller and Riley whānau.<sup>65</sup>

119. In 1966-1967, Ms. Bigwood acquired further interests through transfers and gifts, increasing her shareholding to 6,223. She aimed to purchase

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<sup>61</sup> At 520-521.

<sup>62</sup> At 520-521.

<sup>63</sup> At 520-521.

<sup>64</sup> At 521.

<sup>65</sup> At 522.

the remaining shares to avoid partition issues related to her father's farmed area.<sup>66</sup>

120. Ms. Bigwood initiated the purchase of the remaining shares in 1868, presenting a proposal to the other owners. Some owners of Tunapahore 3 allegedly gifted their shares to Ms. Bigwood due to the perception the land belonged to her father.<sup>67</sup>
121. The claimant asserts that the Savage Whānau and many other owners did not support the sale of Tunapahore 3 to Ms Bigwood. Despite this, the Court confirmed the sale for \$21,390 and Ms. Bigwood became the sole owner of Tunapahore 3, leading to its Europeanisation.<sup>68</sup>
122. In 1972 the land was transferred to Hawai Holdings Limited, eventually the company was deregistered in 1900, and in 1994, the land was divided and sold.
123. Part of Tunapahore 3 became the Hawai Scenic Reserve, acquired by the Crown. This reserve links together two arms of the enormous Raukumara Forest Park, which extends far inland from either end of the Hawai Scenic Reserve.<sup>69</sup>
124. Tunapahore 3 comprises the largest area lost to Māori ownership from the original Tunapahore title.

#### *Tunapahore 4A*

125. In June 1967, the partition of Tunapahore 4 was applied for, with the idea of reserving an acre of land previously made from Tunapahore South B1A for Hawai marae.

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<sup>66</sup> At 522.

<sup>67</sup> At 522.

<sup>68</sup> At 524.

<sup>69</sup> At 525.

126. It took time to arrange the formal reservation of Tunapahore 4A as a Māori reservation, but it was eventually proclaimed by Māori Affairs in March 1971 with 378 owners.<sup>70</sup>
127. Tunapahore 4A has remained the location for Hawai marae.
128. The claimant alleges through Crown legislation Tunapahore 4A was awarded to persons that did not whakapapa to Te Whānau a Harāwaka. Therefore, Te Whānau a Harāwaka land interests in Tunapahore 4A have been alienated.

#### *Tunapahore 6*

129. Crown legislation permitted Tunapahore 6 to be awarded to people that did not whakapapa to Te Whānau a Harāwaka or to Tunapahore.
130. Crown legislation alienated Te Whānau a Harāwaka land interests in Tunapahore 6.

#### *Ongoing Impacts of Tunapahore*

131. Little now remains of the vast area once occupied by Te Whānau a Harāwaka at Tunapahore. The Tunapahore marae with its whareni Te Whānau a Harāwaka and the Waipae urupa three hundred meters further along the roadside is the enduring markers around which Te Whānau a Harāwaka coalesce today.
132. Consequently, the claimants whānau and Te Whānau a Harāwaka have suffered from land loss which was a result of Crown policy and legislation which have failed to protect and restore their mana whenua.
133. The historical dealings concerning the Tunapahore land blocks have significantly eroded the claimant and her whānau connections to the

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<sup>70</sup> At 529.



whenua. Eurocentric notions of land ownership have actively undermined the interests of the claimant and her whānau, severing their ability to realize the spiritual and economic value inherent in Tunapahore. This substantial erosion persists to the present day.

134. The Crown failed to protect Te Whānau a Harāwaka interests in the Tunapahore land block amounting to a breach of Article 2 of Te Tiriti and the Crown's duty to actively protect Māori whenua, resources and taonga.

### **PREJUDICE**

135. As a result of the Crown's breaches, the claimant, her whānau, hapū and iwi have suffered prejudice, including:

- a) Alienation from ancestral lands and the loss of pā, kāinga, wāhi tapu, and taonga which have had continuous impact upon the claimant, her whānau and hapū;
- b) Derogation of mana motuhake and consequent loss of economic, cultural, and political autonomy through the continuing erosion of rangatiratanga;
- c) Destruction of their traditional land tenure system and access to tūpuna whenua and resources;
- d) Loss of economic capability and opportunities to develop their lands and resources for current and future use;
- e) Loss of culture, tikanga, mātauranga, and te reo;
- f) Forced displacement and subsequent movement into urban areas;
- g) Loss of connection to ancestral whenua and moana; and
- h) Stress and difficulties involved in bringing their claim to the Waitangi Tribunal.

### **REDRESS**

136. The claimant seeks the following by way of redress:

- a) A finding that this claim is well founded;
- b) A finding that the Crown has breached its duties under Te Tiriti;
- c) An apology from the Crown;
- d) Acknowledgement of the Treaty breaches and subsequent losses suffered by Whakatōhea in relation to the claimant's land blocks;
- e) Acknowledgement of the Treaty breaches and subsequent losses suffered by Te Whānau a Harāwaka in relation to the Tunapahore and Takaputahi land blocks and their tūpuna interests;
- f) Appropriate redress and compensation for the prejudice suffered by the claimant, her whānau, hapū and iwi; and
- g) Any finding or recommendation that the Waitangi Tribunal deems appropriate.

**DATED** at Auckland this 23rd day of January 2023



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**David Stone**

**Catherine Leauga**

**Matthew Kennelly**

**Counsel for the claimant**

TO: The Registrar, Waitangi Tribunal; Crown Law Office; and those on the notification list for the Wai 1750 Inquiry