I TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

Wai 1750
Wai 1794

KEI RARO I TE MANA te ture o te Tiriti o Waitangi 1975

I TE TAKE O the North-Eastern Bay of Plenty Inquiry District **(Wai 1750)**

Ā

I TE TAKE O a claim by Muriwai Wehi, William Smith and Aden Webb, on behalf of the Whakatōhea hapū Turangapikitoi **(Wai 1794)**

Amended Statement of Claim
Dated 20 May 2024

NGĀTAHI LAW

NGĀTAHI LAW
PO BOX 51319
Pakuranga
Auckland 2140
(09) 534-2472
Counsel Acting
Tony Sinclair
Yashveen Singh
+64 21 0837 4083
tony@ngatahilaw.co.nz

INTRODUCTION

1. This amended statement of claim is filed on behalf of MURIWAI WEHI, WILLIAM SMITH and ADEN WEBB on behalf of the Whakatōhea hapū, Turangapikitoi ("Turangapikitoi") of the Ōhiwa Valley and Harbour, surrounding lands and hinterlands (including interests in Tahora no. 2 block).

The Claimants

2. This Amended Statement of Claim adds to the Statement of Claim filed earlier in this inquiry dated 28 August 2008, which was registered by the Waitangi Tribunal.

3. The claimants are Turangapikitoi of Upokorehe, Te Whakatōhea and Tūhoe.

4. Turangapikitoi exercised tino rangatiratanga over all the tribal rohe of Ōhiwa and surrounds including into the hinterlands south sharing customary interests with Whakatōhea in the Mangatū Waipāoa forest blocks.

5. Turangapikitoi managed their affairs independently.

6. Turangapikitoi have occupied their traditional rohe by right of *take tupuna* and have maintained their ahi-kā-roa within their traditional rohe from the ancient times till the present day.

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

- **a.** They are Māori; and
- **b.** They have been and continue to be or are likely to be prejudicially affected by the various Acts and Crown policies, practices, acts, and omissions adopted by or on behalf of the Crown or its agent.

The Claim

8. This Amended Statement of Claim amends the Wai 1794 Statement of Claim to update the Tribunal on the claim issue suffered by Turangapikitoi relating to their interests in the lands within the North-Eastern Eastern Bay of Plenty Inquiry District ('The Inquiry').

9. The Wai 1794 claim is a historical treaty claim within the definition of Section 2 of the Treaty of Waitangi Act 1975. This claim focuses on the issues and Crown breaches of particular concern to the hapū of Turangapikitoi.

10. Turangapikitoi hapū of the Whakatōhea iwi regarding their rights and interests in the Whakatōhea rohe, specifically the Cheddar Valley and Ōhiwa Harbour. The claimants assert that they have been excluded from settlement negotiations and developments, and their identity, rights, and interests have not been recognised. They highlight the historical injustices done to Whakatōhea, including the confiscation of their land and wrongful labelling as rebels. The claimants also express the need for a broader understanding of their history and the impact of the raupatu (confiscation) on their people.

11. The Cheddar Valley and Ōhiwa Harbour are significant to the Whakatōhea iwi as they are part of their traditional lands and hold cultural and historical importance to the iwi.

12. The current ownership rights of the Ōhiwa Harbour are shared by the Whakatōhea hapū, Turangapikitoi and Upokorehe. They assert that the ownership of the Ōhiwa harbour is within the rohe of Whakatōhea and extends to the Maraetotara stream. They believe that their customary title to the foreshore and seabed, including Ōhiwa Harbour, has not been extinguished and seek the vesting of the defined foreshore and seabed in the Whakatōhea raupatu claim beneficiaries.

13. The breaches mentioned in the document file include the military invasion of Ōpōtiki, raupatu, disease, and the Confiscated Lands Act 1867. These breaches had a significant impact on Whakatōhea, causing damage to their infrastructure and integrity as an Iwi. Many hapū were either killed, died, or scattered, while others were imprisoned as rebels. Additionally, not all those living in the area at the time were awarded land in the Native Reserves, further exacerbating the situation.

FIRST CAUSE OF ACTION

The failure by successive governments to protect the rangatiratanga of Turangapikitoi.

BREACH

14. The first cause of action is the failure by successive governments to protect the rangatiratanga of Turangapikitoi and that of all Upokorehe hapū over the land and all land-based, fresh, and saltwater taonga including insects and invertebrates, within the Upokorehe area including the riverbeds and the seabed and foreshore.

PARTICULARS

15. Successive governments have failed to protect the land and taonga of Turangapikitoi through various policies, practices, actions, and omissions by or on behalf of the Crown. Some of the specific ways in which they have failed include:

a. **Denial of Turangapikitoi Identity** - The identification of Upokorehe as 'one hapū' through the establishment of native reserves ran counter to centuries of complex whakapapa of Upokorehe, leading to Upokorehe being regarded as 'one hapū' when the Crown established the Whakatōhea Māori Trust Board. This damaged the integrity and infrastructure of Whakatōhea as an iwi.

b. **Raupatu -** The loss of life of Turangapikitoi during the Crown raupatu, and the 'scorched earth' approach taken by the Crown in Opotiki.

Lands - Wrongful allocation of reserve land in the Ōhiwa.

The Tahora Block - Failure to protect Turangapikitoi interests as the direct descendants of both Tarawa and Kahuki in the Tahora No. 2 Block.

General loss of land rights within the rohe of Upokorehe.

c. **Forests -** Failure to protect the forestry rights and interests of Turangapikitoi within the Mangatū and Oamaru Blocks and Central North Island Crown Forests.

d. **Customary Fisheries** - Failure to protect Turangapikitoi customary fishing rights and interests.

e. **Ōhiwa Harbour -** Failure to protect the rangatiratanga of Turangapikitoi and all Upokorehe hapū over the land and all land-based, fresh, and saltwater taonga.

f. **Cultural and Socio-Economic Well Being** - Ongoing failure to protect and support the spiritual, cultural, social, environmental and economic well-being of Turangapikitoi.

g. **Kaitiakitanga -** Failure to support Turangapikitoi and all Upokorehe hapū to practice and sustain their kaitiakitanga over their land, forests, fisheries, and other taonga.

h. **Cultural and Intellectual Taonga** - Failure to ensure recognition and protection of the cultural and intellectual taonga of Turangapikitoi and Whakatōhea hapū.

i. **The Department of Conservation** - Failure by the Department of Conservation to provide for Whakatōhea hapū to exercise rangatiratanga and kaitiakitanga over the Roimata hapū recognized today as 'Upokorehe' on the Whakatōhea Māori Trust Board.

SECOND CAUSE OF ACTION
Loss of Turangapikitoi Customary Ownership

DUTY
16. At all times the Crown had a duty to actively protect the taonga of Turangapikitoi Māori of their customary interests

BREACH

17. The Crown has failed to adequately recognise the Turangapikitoi Customary Ownership of Ōhiwa harbour, including its islands, foreshore and seabed, and waters while assuming ownership and control of the harbour.

PARTICULARS

18. As at 1840, Turangapikitoi Māori exercised tino rangatiratanga and ownership over their rivers and streams lakes and other fresh water resources and all their composite parts, including the beds, the water that is contained or flows therein and all other fresh water including fisheries.

19. The rivers, streams, lakes and other freshwater resources are taonga of the claimants. They were an important source of food and economic activity, and were also important for cultural, social, and spiritual purposes for Turangapikitoi Māori.

20. The Crown expropriated the claimants' property rights in rivers, streams, and other water resources without consultation and without the claimants' consent.

21. Turangapikitoi Māori never knowingly or voluntarily relinquished their tino rangatiratanga or ownership and control over the rivers, streams, lakes, and other freshwater resources within their rohe.

22. The Crown applied the ad medium filum aquae common law principle in respect of riparian lands without the knowledge or consent of Turangapikitoi Māori. This resulted in their loss of ownership and ability to exercise tino rangatiratanga over the beds of rivers and other water resources when riparian lands were sold or otherwise alienated from them.

THIRD CAUSE OF ACTION
Fisheries And Fishing Rights

DUTY

23. The Crown has a duty to protect Māori fishing rights that are founded on tikanga.

BREACH

24. Turangapikitoi customary fishery rights are founded on Māori tikanga which were guaranteed under the Treaty of Waitangi which gave them full and exclusive and undisturbed possession for their fisheries which have been adversely affected by actions and omissions of the Crown.

FOURTH CAUSE OF ACTION
Raupatu

DUTY

25. The Crown had a duty to protect Māori land and taonga and to act in good faith towards Māori and provide good governance and equity of treatment.

BREACH

26. The Crown set in motion events that led to the dispossession of Turangapikitoi land and the Crown failed to return all the land confiscated.

PARTICULARS

27. The Crown saw Volkner's killing as an act of war.

28. Despite the Crown's view being different, Governor Grey declared martial law.

29. Governor Grey issues a proclamation of peace on 2 September 1865 that did not reach Turangapikitoi Māori to be able to respond.

30. The Crown expedition attacked Ōpōtiki but were unopposed.

31. The Crown confiscated land under the New Zealand Settlements Act 1863.

32. This raupatu has caused great cultural and spiritual loss as Turangapikitoi were cut off from access to their traditional sites.

33. Tohunga were suppressed and persecuted for practising their spiritual practices and rituals.

34. The Compensation Court that sat in Ōpōtiki from 7 March 1867 could not hear all the claimants.

35. These processes transformed communally owned land held under customarily tittle to individual private property.

FIFTH CAUSE OF ACTION
Reserves

DUTY

36. The Crown had a duty to ensure that reserves were created for Māori in the matter of Crown Purchasing of lands from Māori to ensure Māori were safe from purchases.

BREACH

37. The Crown gave reserves that Turangapikitoi had Māori Customary Rights in, to other people.

PARTICULARS

38. There were no reserves of tribal lands allocated for them, and that the Reserves Policy enacted to protect them by ensuring sufficient lands to meet their present and future sustainability failed miserably.

39. The reserves policies also changed the traditional hapū forms of retaining land.

40. No longer were lands held as a hapū but were held in individual ownership of members of that hapū.

SIXTH CAUSE OF ACTION
Pollution

DUTY

41. The Crown had a duty to actively protect the land resources and act in good faith towards Turangapikitoi in respect of their environment and providing good governance and equality of treatment between Turangapikitoi Māori and Settlers in accordance with the principles of the Treaty of Waitangi.

BREACH

42. The crown and local authorities polluted the harbour, desecrated the harbour and its flora and fauna while managing Ōhiwa Harbour.

PARTICULARS

43. At 1840, Turangapikitoi Māori exercised tino rangatiratanga over the environment within their rohe.

44. Since 1840, the Crown has asserted management and control over the Turangapikitoi environment, including indigenous and introduced flora and fauna.

a. The Crown has enacted legislation which empowers it or its delegated bodies to manage and control the environment.

b. The Crown has delegated functions and powers for environmental management to central and local Government agencies such as the Marine Department; the Wildlife Service; provincial governments; river boards; road boards; highway boards; catchment boards; borough councils; county councils; city councils; regional

authorities; territorial authorities; regional councils and acclimatisation societies.

45. These agencies have usurped and undermined the exercise of tino rangatiratanga by Turangapikitoi Māori over the environment and marginalised Turangapikitoi Māori from effective participation.

46. Until recently, most of the legislation delegating authority from the Crown to local government and other bodies did not require these bodies to observe or give effect to the guarantees of the Treaty of Waitangi 1840.

47. Turangapikitoi Māori were not adequately represented on these bodies and were largely excluded from participation in decision making in relation to the environment.

48. The Crown granted significant legal recognition and responsibilities to settler dominated agencies and interest groups without requiring them to take account of Turangapikitoi Māori concerns or requiring them to consult with Turangapikitoi Māori.

a. Under the Animals Protection Act 1867, Acclimatisation Societies were given statutory recognition and powers, legal authority, land and financial assistance.

b. From 1867 Acclimatisation Societies were given extended powers over the management of councils; county councils; city councils; regional authorities; territorial authorities; regional councils and acclimatisation societies.

49. These agencies have usurped and undermined the exercise of tino rangatiratanga by Turangapikitoi Māori over the environment and marginalised Turangapikitoi Māori from effective participation.

50. Until recently, most of the legislation delegating authority from the Crown to local government and other bodies did not require

these bodies to observe or give effect to the guarantees of the Treaty of Waitangi 1840.

51. Turangapikitoi Māori were not adequately represented on these bodies and were largely excluded from participation in decision making in relation to the environment.

52. The Crown granted significant legal recognition and responsibilities to settler dominated agencies and interest groups without requiring them to take account of Turangapikitoi Māori concerns or requiring them to consult with Turangapikitoi Māori.

a. Under the Animals Protection Act 1867, Acclimatisation Societies were given statutory recognition and powers, legal authority, land and financial assistance.

b. From 1867 Acclimatisation Societies were given extended powers over the management of harvesting indigenous birds and fish without Māori participation.

c. Turangapikitoi Māori were not consulted on issues of protection and harvesting of indigenous species.

d. Designated hunting seasons for native game contradicted Māori custom.

e. Turangapikitoi Māori authority and methods of conservation, protection and management were given no legal recognition.

53. The Crown has continued to control the harvesting of indigenous flora and fauna through;

i. the Animals Protection and Game Act 1921-22

ii. the Wildlife Act 1953

iii. the Plant Varieties Act 1987 and

iv. the Marine Mammals Protection Act 1978

without any requirement to take into account guarantees under the Treaty of Waitangi 1840 or Māori concerns.

54. Turangapikitoi Māori have been permitted little or no role in the management of exotic flora and fauna.

55. Until relatively recently Turangapikitoi Māori have not been consulted concerning the need for environmental protection arising as a result of the introduction of exotic species of flora and fauna.

56. Currently, the Department of Conservation administers all publicly owned land that is protected for scenic, scientific, historic and cultural reasons or set aside for recreation, including reserves and parks.

57. The Department is responsible for the preservation and management of wildlife and natural vegetation, wild and scenic rivers, the coastal seashore and seabed, lake shores and all navigable rivers.

58. Although section 4 of the Conservation Act 1987 requires that the Act is administered and interpreted to give effect to the principles of the Treaty of Waitangi, the department still holds overwhelming legal powers to make final decisions concerning indigenous flora and fauna and remaining Mahinga Kai that continues to undermine Māori traditional systems of authority.

a. Turangapikitoi Māori are required to obtain the department's permission to harvest indigenous materials.

b. Turangapikitoi Māori are legally required to purchase user passes from the department to land on conservation estate on waka trips.

59. Although the current environmental management regime recognises a requirement to consult Turangapikitoi Maori in

respect of environmental management it does not sufficiently recognise customary Māori systems of authority, nor does it allow Turangapikitoi Māori effective involvement in the management and preservation of indigenous ecosystems.

60. The Crown has allowed Ōhiwa Harbour to become environmentally degraded, causing the loss of significant freshwater fishing resources, in particular tuna, which was once abundant.

SEVENTH CAUSE OF ACTION
The Native Land Court

DUTIES
61. At all times the Crown had duties to:

a. Actively protect Māori and their lands to the fullest extent practicable;

b. Act reasonably and with the utmost good faith towards Māori;

c. Adopt a fair process in any dealings with Māori and their lands;

d. Recognise and uphold Māori customs and practices;

e. Foster and protect the autonomy of Māori;

f. Ensure Māori were left with a sufficient land base for their present and future needs; and

g. Remedy wrongful acts of the Crown and its agents;

BREACH
62. The Crown, in breach of its duties, established the Native Land Court to investigate and extinguish Māori customary title and to convert traditional modes of ownership into individual titles derived from the Crown.

PARTICULARS

63. In 1840, Ōhiwa Harbour and surrounding lands were held by Turangapikitoi Māori in accordance with custom.

64. In 1862, the Crown established the Native Land Court to:

a. Convert customary ownership into a form of title that could be easily alienated by the Crown and private purchases;

b. Undermine customary Māori authority; and

c. Promote colonisation and settlement on lands made available by alienations consequent upon Native Land Court title investigation.

65. The Crown did not consult with Turangapikitoi Māori prior to the introduction of the legislation and the establishment of the Native Land Court.

66. The Crown imposed the Native Land Court processes despite opposition and assurance from Crown that the Native Land Court would not be forced on them.

67. Once the Land Court was established it was not possible for the non-sellers to simply refuse to engage and assume they could retain their interests.

68. The Native Land Court converted customary interests in land to an English land tenure system which prioritised individual interests in land over the collective. This allowed for hapū interests in large blocks to be split amongst several individuals and facilitated the alienation of land from Māori hands.

EIGHTH CAUSE OF ACTION
Military Engagement

DUTY

69. At all times the Crown had duties to actively protect Turangapikitoi Māori and provide good government.

BREACH

70. In breach of these duties the Crown failed to actively protect and recognise the interests of Turangapikitoi Māori by invading their lands and occupying their lands and charged and tried Turangapikitoi Māori.

RELIEF SOUGHT

71. Turangapikitoi seek the following relief:

a. That the Crown made decisions and exercised control of Ōhiwa Harbour and its tributies, islands, flora and fauna and in doing so caused irreversible damage to Ōhiwa Harbour;

b. That the Crown adopted policies that legislative framework that resulted in Turangapikitoi have land lost to the Crown through raupatu that alienated them from their land and resources;

c. That the Crown adopted policies and legislative framework that resulted in exclusion of owners and compensation awards determined without having a true account of basic information like surveys, the quality of the land and the size of land taken;

d. That the Crown undercompensated Turangapikitoi;

e. That the Crowns' action resulted in the individualisation of title of Māori customary title;

f. That the Crown compulsorily acquired Turangapikitoi land for Military use without adequate consultation and compensation;

72. Turangapikitoi further seek the following relief in relation to Crown breaches of the Treaty of Waitangi:

a. Findings that the Crown should make a full, public and unreserved apology for those actions and omissions that are found to be in breach of the Treaty of Waitangi;

b. Findings that the Crown should pay compensation to Turangapikitoi for the breaches of the Treaty of Waitangi outlined in the statement of claim in an amount which appropriately recognises the losses suffered by the claimants as a consequence of the Crown's breaches of the Treaty of Waitangi;

c. Findings that the Crown return to Turangapikitoi sufficient land, resources and taonga which appropriately recognises the losses suffered by Turangapikitoi as a consequence of the Crown's breaches of the Treaty of Waitangi;

d. Findings that the Crown provide Turangapikitoi with sufficient cultural redress which appropriately recognises the losses suffered by Turangapikitoi as a consequence of the Crown's breaches of the Treaty of Waitangi; and

e. The repatriation of all Turangapikitoi taonga from overseas and other institutions;

f. Reimbursement for the costs and expenses of bringing this claim; and

g. Any other such recommendation that the Tribunal should consider appropriate.

NINTH CAUSE OF ACTION
Rating

DUTY
73. At all times the Crown had duties to:

a. Actively protect Turangapikitoi Māori lands to the fullest extent practicable;

b. Ensure that Turangapikitoi Māori retained full exclusive and undisturbed possession of their lands for as long as they wished, and consult with Turangapikitoi Māori over any rating regime, and obtain their consent.

BREACH

74. The Crown, in breach of its duties, adopted, without consultation or consent, a policy of applying rates to Turangapikitoi Māori land, placing pressure on owners and in some cases resulting in charging orders and further alienation of Turangapikitoi Māori land and hindering economic development.

PARTICULARS

75. The Crown enacted the following rating legislation applying to Turangapikitoi Māori land, without consultation or consent:

a. The Crown and Native Lands Rating Act 1882, which made all Turangapikitoi Māori land near public roads rateable;

b. The Rating Acts Amendment Act 1893 which, with exceptions, made Native land rateable;

c. The Rating Act Amendment Act 1896, which included power to place land in arrears under lease without the consent of the owners;

d. The Native Land Rating Act 1904, which extended the categories of Māori land that were to pay full rates;

e. The Māori Land Laws Amendment Act 1908, which extended the powers of the Māori Land Board to confirm alienation and take over the administration of all native townships;

f. The Native Land Rating Act 1924 which established a new system of collecting Native rates;

g. Rating provisions of the Native Townships Local Government Act 1905, which gave residents of native townships the power to elect their local governing body;

h. Rating Powers Act 1988, which stopped the forced sale of land for non-payment of rates, appointing a receiver instead;

i. The rating of Māori land continued despite Turangapikitoi living or residing on landlocked whenua restricting access without proper and safe roading;

Further Research

76. Should during the hearing of this inquiry any gaps be identified in the research the Tribunal and or the Crown Forestry Rental Trust be instructed to enable any such research.

Leave To Amend Claim

77. Leave is hereby sought to amend this claim following further and additional research to be carried out into this claim.

Dated at **Tāmaki Makaurau/Auckland** this **20** day of **May 2024**

Tony Sinclair **Yashveen Singh**
Counsel for the Claimants

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

This Statement of Claim is filed by **TONY SINCLAIR** Solicitor for the claimants whose address for service is at the offices of Ngātahi Law Limited, 120 Botany Road, Botany Downs, Auckland, 2010

Documents for service on the claimants may be left at that address for service or may be:

i. Posted to the solicitor at **PO BOX 51319, Pakuranga, Auckland 2140**
ii. Transmitted to the solicitor by email: **tony@ngatahilaw.co.nz** or **admin@ngatahilaw.co.nz**