IN THE WAITANGI TRIBUNAL

WAI 1750
WAI 1795

IN THE MATTER	of the Treaty of Waitangi Act 1975
AND	The North Eastern Bay of Plenty Inquiry (Wai 1750)
AND	a claim by Tāwhirimātea Williams on behalf of himself and for the benefit of the hapū of Ngāti Ruatakena (Wai 1795)

AMENDED PARTICULARISED STATEMENT OF CLAIM

Dated 23 January 2024

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A. TE KEREME

1. This Statement of Claim was first filed on 29 August 2008 and is brought by Tāwhirimātea Te Auripo Rewita Williams for and on behalf of himself and Ngāti Ruatakena, and for the benefit of the constituent hapu and marae of Ngāti Ruatakena to the extent that they choose to support this claim (herein referred to as "the **Claimants**"). The Claimant community of Ngāti Ruatakena covered by this claim, and their customary rohe are defined in Section B of this Statement of Claim.

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

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

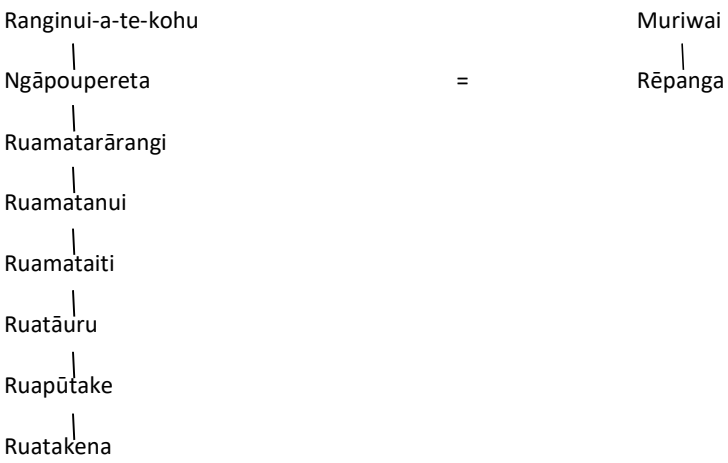
4. The claimant, Tāwhirimātea Te Auripo Rewita Williams and the whānau and individuals of Ngāti Ruatakena are Māori and claim that they have been and remain prejudicially affected by the ordinances, Acts, Regulations, policies, practices, acts and omissions of the Crown set out herein, which were enacted,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

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

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

B. NGĀTI RUATAKENA

7. The Claimants and the hapū of Ngāti Ruatakena are descended from Ruatakena. The following whakapapa of Ngāti Ruatakena is provided:[1]



8. Ngāti Ruatakena is a hapū of Whakatohea. The customary rohe of the Whakatohea includes all lands, waterways, wai and tipuna wai (waters and ancestral waters), puna wai (spring-well including groundwaters), forests, fisheries and other taonga within the following general area:[2]

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

9. Ngāti Ruatakena have customary interests in lands, waterways, forests, fisheries and other taonga within the above Whakatohea rohe and have significant sites within that rohe which will be detailed in a future amended claim.

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[1] Walker, Ranginui. *Opotiki-Mai-Tawhiti- Capital of Whakatōhea*, p25.

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

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

11. The claimant, Tāwhirimātea Te Auripo Rewita Williams and the hapū, whānau and individuals of Ngāti Ruatakena are Māori and have been and remain prejudicially affected by the Ordinances, Acts, Regulations, policies, practices, acts and omissions of the Crown set out herein, which were enacted, promulgated, formulated, undertaken, done or omitted to be done by the Crown in breach of the principles of the Treaty of Waitangi.

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

C. NGA HARA O TE KARAUNA

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

(I) NGĀTI RUATAKENA HISTORICAL TREATY CLAIMS

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

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

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

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

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

(d) The Crown has failed to adequately recognise or provide for the full autonomy and te Tino Rangatiratanga of Ngāti Ruatakena; and,

(e) The Crown has failed to recognise and provide for Ngāti Ruatakena.

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

(II) NGĀTI RUATAKENA LANDLESSNESS

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

18. At 1840 Ngāti Ruatakena held customary interests within its rohe in the Ōpōtiki District.

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

20. As a result of the Crowns actions in implementing mechanisms such as the Native Land Court today Ngāti Ruatakena have no customary lands held in accordance with tikanga Māori under the auspices of the hapū.

<u>Particulars</u>

Landlessness

a) The Crown's definition of sufficient land holdings to support maintenance was 50 acres per head.[3]

b) By 1908, Whakatōhea was left with only 23 acres of mostly inadequate land per person.[4]

c) In 1908, the Stout Ngata Commission found that Whakatōhea had 'very little land left in their hands'[5]

d) Te Whakatōhea, including Ngāti Ruatakena, filed numerous petitions and letters with the Crown referring to the dire circumstances in which they found themselves post-raupatu[6]

e) In the late 1800s, Whakatōhea were focused on mere survival, they had been forced into the wage economy. [7] This was a dramatic contrast to their situation pre-raupatu (which Walzl describes) where they were landowners, business / ship owners.

f) The situation by the early 1900s included that Māori were now leasing land from Europeans to grow crops[8]

Missionary Land Purchases and Old Land Claims Commission

g) The Crown established the Old Land Claims Commission ("**OLCC**") in 1841 which continued to hear and validate old land claims despite knowing that Māori had not fully understood the consequences of alienation.[9]

[3] Wai 1750, #A25, Luiten, Jane, *Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho'*, Waitangi Tribunal, August 2022, p 33
[4] Wai 1750, #A32, Stirling, Bruce, Twentieth Century Land Legislation and its Impacts, North Eastern Bay of Plenty Inquiry, CFRT, November 2023, p 271
[5] Wai 1750, #A11, Crocker, Dr Therese, *An Overview of Māori Political Engagement in the North-Eastern Bay of Plenty 1871-2017*, Waitangi Tribunal, August 2021, p 62
[6] Crocker, pp 43-44
[7] Crocker, pp 43-44
[8] Crocker, p 74
[9] Wai 1750, #A30, Walzl, Tony, *War and Raupatu 1840 – 1871 Report*, Waitangi Tribunal, 15 March 2023, p 1055

h) Successful claimants received a crown grant for their claims up to a maximum of 2,560 acres per claimant. 'Purchased' land in excess of this limit became property of the Crown as 'surplus', rather than reverting to Māori vendors.[10]

i) These old land claims were in effect a confiscation; the Crown confiscated 7,638 acres of "surplus" land as a result of missionary claims to the land through the process of the OLCC.[11]

j) The Crown declared surplus lands from the Wilson purchases as Crown owned land rather than returning the land to its customary owners.[12]

k) The Crown validated the Wilson purchase of two blocks of land on the eastern and western side of the Waioeka river despite contradictory and unclear evidence of his right to purchase the land.

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

   i. Wilson claimed to have purchased two blocks of land in Ōpōtiki, one to the East of the Waioeka River (Ngaio Block) and one to the West (Pakihi Block).[13]

   ii. The Wilson purchase was arranged before the outlaw of all European land alienation which prevented purchases of Māori land 30th January 1840.[14]

   iii. However, it is unclear whether the purchase was completed until after this proclamation due to conflicting evidence. The evidence available shows payments having been made in March 1840, an absence of a Deed of Purchase and contradictory evidence of Wilson being in Ōpōtiki until the 18th of January.[15]

[10] Wai 1750, #A12, Luiten, Jane, *Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands*, Waitangi Tribunal, August 2021, pp 17 and 41.
[11] Luiten part 1 page 42
[12] Walzl, p 167
[13] Walzl, p 72
[14] Walzl, p 53
[15] Walzl, p 67

iv. Furthermore, despite Wilson's journal dating the purchases to have been completed between the 14th and 19th of January, the Deeds presented to the OLCC were dated 27th and 28th January.[16]

v. Despite evidentiary issues, and the Commissioner originally stating that Wilson's claim could not be heard, the OLCC heard his claim and validated his title.[17]

vi. Furthermore, the Crown declared surplus lands from the Wilson purchases as Crown owned land rather than returning the land to its rightful customary owners.[18]

m) The Crown's supposed 'surplus' land arising from these Old Land Claims was later used to defeat claimants in the compensation court seeking the restoration of their confiscated lands at Waiotahe and Tirohanga[19]

(III) RAUPATU AND CONFISCATION

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

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

Waging of War

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

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[16] Walzl, p 67
[17] Walzl, p 53
Luiten part 1 pp 40-42.
[18] Walzl, p 167
[19] Luiten, Part 1, p 12

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

25. The Crown's forces, under the responsibility of the Crown, stole personal and other taonga and property of Ngāti Ruatakena individuals and failed to return such property.

26. The Crown waged war against Ngāti Ruatakena individuals without regard for their personal or spiritual welfare.

27. The Crown unjustly labelled and stigmatised Ngāti Ruatakena individuals as 'rebels' when those individuals were never in rebellion against the Crown.

28. The Crown improperly and without permission nor consent entered into the territories of Ngāti Ruatakena and other hapū.

29. The Crown invaded the territories of Ngāti Ruatakena and other hapū in order to destroy, undermine, or subjugate their rangatiratanga and the resistance to the unlawful loss of their lands and assets.

30. The Crown without permission nor consent constructed stockades and forts within the lands of Ngāti Ruatakena and other hapū and using materials and resources from those lands.

Confiscation of Ngāti Ruatakena lands

31. The Crown wrongfully, unjustly, and illegally confiscated traditional Ngāti Ruatakena lands.

32. The Crown wrongfully and unjustly, if not illegally, proclaimed under the New Zealand Settlements Act 1863 a wide and general confiscation district and then took that same district as a settlement area and whether or not that area included lands of those who had not participated in the fighting.

33. The Crown wrongfully relocated Ngāti Ruatakena individuals from their traditional lands and onto Native Reserves thus restricting Ngāti Ruatakena access to their traditional lands, waterways and resources and limiting their survival to

those resources in close proximity to the Native Reserve.

34. The Crown wrongfully, unjustly and unfairly purported to extinguish, or extinguished, the customary title of Ngāti Ruatakena lands within the confiscation district.

35. The Crown failed to acknowledge that Ngāti Ruatakena acted in self-defense of their property but alleged that individuals of Ngāti Ruatakena were in "rebellion".

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

37. The Crown failed to return lands to those who were found not to be "rebels" their lands in the customary form in which they were previously held, but rather returned such lands in individualized land ownership under the power of a Crown-based authority.

38. The Crown allowed others to be settled on Ngāti Ruatakena lands taken by the Crown.

39. The Crown failed to return wāhi tapu and sacred sites to Ngāti Ruatakena.

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

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

<u>Particulars</u>

Ngāti Ruatakena situation pre-raupatu

a) Whakatōhea were "very rich" prior to 1865, having owned multiple ships, farming equipment and other supplies.[20] Approximately 30 schooners were

[20] Walzl, p 858

owned by Māori in Ōpōtiki, which would make regular trips to and from Auckland and the Bay of islands to trade goods.[21]

Waging War

b) On 5 September 1865, Martial Law was declared with the justification that this was to enable the arrest the "murderers of Volkner".[22] Three days later the Crown instructed a force of 500 men to land in Opotiki, using military force on the entire population of Opotiki without any negotiation for the handover of the murderers,[23] any opportunity for surrender,[24] or any attempt to communicate the terms of the invasion. [25] No prior warning was given.[26] Terms were only communicated 9 days after the arrival of troops.[27]

c) The killing of Volkner was an alleged criminal offence, yet all of Te Whakatōhea was treated as though they were in rebellion and guilty of his murder.[28] The Crown was also motivated by what it perceived to be "the Pai Marire insurgency".[29]

d) Crown forces pillaged, stole and destroyed the wealth that Te Whakatōhea had built up through farming and trading over the previous decades.[30]

e) Members of the Crown military force took advantage of the invasion as an opportunity for personal enrichment and had little regard for the property of Te Whakatōhea.[31]

f) Crown engaged a "scorched earth" tactic, taking/destroying nearly all Te Whakatōhea's food.[32]

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[21] Walzl, p 280
[22] McLellan, p 37
[23] Walzl 858
[24] Wai 1750, #A03, McLellan, John, *Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874*, Waitangi Tribunal, July 2020, p 63
[25] Walzl, p 860
[26] McLellan, p 62
[27] McLellan, p 77
[28] McLellan, p 664
[29] McLellan, p 64
[30] McLellan, pp 50-51
[31] McLellan, p 52
[32] McLellan, p 52

g) There were 58 deaths among Whakatōhea during the landing and occupation of Opotiki by Crown forces.[33] The number of casualties was a significant percentage of the iwi's population.[34]

Confiscation

h) The Crown passed various laws including the New Zealand Settlements Act 1863 and its amendments to provide legislative authority for confiscation of and compensation for the taking of Māori lands by the Crown.[35]

i) Crown legislation provided that once "rebellion" was identified, land could be confiscated from that Māori group.[36] However, it is clear that the legislation concerning land confiscations was motived by facilitating land for settlement by Pākehā.

j) On 17 January 1866 the Bay of Plenty confiscation was declared,[37] despite there being insufficient evidence of "rebellious" acts.[38] The legislation which authorised confiscation of lands did not sufficiently define what a "rebel" meant so as to allow broad Crown discretion.[39] Customary title was extinguished with the stroke of a pen.

k) The amount of land taken under raupatu was disproportionate to what was necessary under the authorising legislation.[40]

Return of confiscated lands

l) The Confiscated Lands Act 1967 allowed the Governor to create reserves on confiscated land and issue confiscated land as compensation outside of or in addition to the Compensation Court process.[41]

[33] McLellan, pp 47, 64
[34] McLellan, p 47
[35] McLellan, p 71, p 85
[36] McLellan, p 71, p 85
[37] Luiten part 1, p 15-16, McLellan, p 75, 86
[38] McLellan, p 19
[39] McLellan, p 76
[40] McLellan, p 86
[41] McLellan, p 91

m) To be eligible for land compensation, individuals of Whakatōhea had to agree that they had been rebels and pledge allegiance to the Crown, even if they had not personally been in rebellion, as many had not.[42] Awards were conditional on "maintaining loyalty" until 1 January 1870.[43]

n) Of land that was returned to Māori from the confiscation district, much was unsuitable for cultivation or other productive use – this land went to the military settlers or was put up for sale by the Crown.[44]

o) JA Wilson (Crown agent charged with finalising awards of compensation to Māori) returned land via out of court settlements to various 'groups and individuals of Whakatōhea'.[45] It is not apparent what structure or transparency there was around these out of court arrangements.[46] A few years later, Wilson's judgement and methods when acquiring Māori land for the Crown were officially inquired into,[47] leading to the implication that he may have been something of a "loose operator".

p) At the time of Wilson's private negotiations, conflict was ongoing in the district and travel and communication were therefore hampered.[48] This casts doubt on whether different hapū representatives would have had equal access to participate in these negotiations.[49] Wilson referred to the "absence of the bulk of the claimants."[50]

q) It appears to have been Wilson that decided on the size of the reserve lands at Ōpape [51]. However, the basis of the information he was working from to make this decision appears dubious at best.[52] Wilson's census appears to have been

[42] McLellan, p 82, p 102
[43] McLellan p 102
[44] McLellan pp 83-84
[45] McLellan, p 84
[46] McLellan, p 92
[47] McLellan p 89
[48] McLellan, p 93
[49] McLellan, p 93
[50] McLellan, p 98
[51] McLellan, p 98
[52] McLellan, p 98

the basis to ascertain "the acreage due to each non-rebellious native who may be able to prove a claim."[53]

Compensation Court

r) The Compensation Court was held in Bay of Plenty between March and December 1867. To claim compensation a written application (dependent on access to literacy) was required with a cut-off date of 1 December 1866 (though claims received after cut off were still heard).[54] At this time, conflict was still ongoing in the area. It appears to have been the Colonial Secretary who decided whether the claim was "eligible" before forwarding the claim to the Court.[55]

s) Many claimants and witnesses failed to attend hearings of the Court due to being engaged in the war at Rotorua or busy harvesting their crops. The March – April 1867 sitting of the Court in Opotiki was forced to adjourn early for this reason.[56]

t) If a Te Whakatōhea claimant made a claim to land that had already been awarded to a Military settler, this was too bad and if the claimant was successful, they would have to be awarded land elsewhere.[57]

u) The Maketū hearing (8 - 12 July 1867) included several claims to land in and around Opōtiki (a 2-day ride away).[58]

v) The ongoing hostilities and fighting meant some witnesses could not be present.[59] Failure of the claimant to appear resulted in the claim being dismissed.[60]

w) It appears there was no legal representative for the Māori claimants as part of the Compensation Court hearings.[61] Crown agent Wilson organised the Māori

[53] McLellan, p 106
[54] McLellan, p 104
[55] McLellan, p 104
[56] McLellan, p 107
[57] McLellan, pp 107-109
[58] McLellan, p 109
[59] McLellan, p 110
[60] McLellan, p 116
[61] McLellan, p 109

witnesses to attend the hearing and provide evidence in relation to their claims.[62] Crown agent Wilson organised witnesses to dispute claims he did not support.[63] He was also compromised by being Special Commissioner and Crown Agent in the process.[64]

x) Admitting involvement with Pai Marire resulted in claims being dismissed.[65]

y) A number of married women in the confiscation district who would have otherwise had a claim, did not make claims to the Compensation Court as they were "under the impression they are implicated in their husband's rebellion" (even though it was subsequently established that being the wife of a rebel would not make them ineligible).[66]

z) The Compensation Court process pitted Māori against Māori and resulted in some Māori giving evidence against others solely to secure their own claims.[67]

(IV) NATIVE LAND LEGISLATION AND THE NATIVE LAND COURT

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

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

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

(b) commuting Māori customary title and rights into an individualized Pākehā fee simple title;

(c) promoting and facilitating the de-tribalisation of Māori; and

(d) promoting and facilitating the assimilation of Māori into Pākehā customs and

[62] McLellan, p 110
[63] McLellan, p 116
[64] McLellan p 116
[65] McLellan, p 112
[66] McLellan, pp 114-115
[67] McLellan, p 116

practices.

44. The Crown established the Native Land Court without any proper consultation with or input from Ngāti Ruatakena generally.

45. The Crown, as a consequence of the operation of the Native Land Court, destabilized and/or destroyed and failed to protect Ngāti Ruatakena traditional systems of land tenure based on tikanga Māori including land rights, use, occupation and control.

46. The Crown established the Native Land Court within which title adjudication reduced customary hapū management over resources into ownership of individual interests, replacing variously layered customary land use rights with fixed boundaries over the land.

47. The Crown established the Native Land Court which had the effect of defeating chiefly and tribal authority and tino rangatiratanga. In doing so, the Crown was in breach of its duties of good faith and active protection under the Treaty of Waitangi in failing to provide for Ngāti Ruatakena authority and control during investigation into internal tribal and hapu boundaries and interests.

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

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

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

51. The Crown forced Ngāti Ruatakena to pay survey costs associated with customary

title investigations or partitions whether or not Ngāti Ruatakena wished to have their lands surveyed. Such costs were invariably repaid in land.

52. The Crown failed to protect Ngāti Ruatakena from excessive survey charges.

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

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

Particulars

Native Land Legislation

a) The **Native Lands Acts 1862/1865** individualised title to Māori land intentionally destroying the "communistic character" of Māori. [68]

b) The **Native land Amendment Act 1877** allowed the Native Minister to apply to the Native Land Court to have the Crown's interest in any block determined in order to no longer require consent from all owners to sell Māori land.[69]

c) The **Native Land Act 1894** provided for the establishment of incorporations (and legislation through the 20th century retained provisions relating to the structure and administration of incorporations).[70] Incorporated titles were then managed by a block committee of a committee of management (which ultimately facilitated sale as it made it easier for the Crown or private purchaser to deal with just one entity, rather than multiple individual owners).[71] The main intention of this act was "to facilitate the alienation (by lease, purchase or mortgage) of multiply owned land.[72] Under this Act, block

[68] Crocker, p 62
[69] Luiten part 2, pp 40-41.
[70] Wai 1750, #A32, Stirling, Bruce, *Twentieth Century Land Legislation and its Impacts, North Eastern Bay of Plenty Inquiry*, CFRT, November 2023, p 16
[71] Stirling, p 16
[72] Stirling, p 49

committees had the authority to lease the land for a term not exceeding 30 years.[73]

d) The **Native Land Settlement Act 1905** was established to identify what lands were required for Māori use and occupation, and what was "surplus", the latter to be compulsorily vested in the District Land Boards for lease and sale to Pākehā.[74] The Māori Land Boards were first established under this Act.[75]

e) The **Native Land Settlement Act 1907** facilitated the lease, sale and settlement (by Pākehā) of Māori land. [76] This act provided for proclamation under Part 1 of "land available for settlement" (irrespective of owners wishes).[77]

f) The landlessness provisions of the **Native Lands Act 1909** intended to prevent landlessness as a result of crown purchase, were either ignored or easily circumvented and so in practice provided little to no protection against landlessness.[78]

g) The **Native Land Act 1909** provided that a meeting of assembled owners could be called by the District Māori Land Board, acting on the direction of the Native Minister (who would usually be acting on the advice of the Native Land Purchase Board). The required quorum was only five owners, meaning absent owners would have no say at all.[79] An essential feature of the Act was the removal of all existing restrictions on the purchase of Māori land, such as existing provisions deeming a title to be inalienable, allowing Māori to alienate land in much the same way as Pākehā.[80]

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

[73] Stirling, p 48
[74] Luiten part 1, p 35.
[75] Stirling, p 136
[76] Stirling, pp 6-7
[77] Stirling, p 97
[78] Stirling, p 66
[79] Stirling, p 66
[80] Stirling, p 136

Māori land owners.[81] This policy was pushed through despite considerable opposition from Māori, including Māori of this district.[82]

Native Land Court

i) The Native Land Act 1862 was enacted with the goal of transforming customary/collective hapū title to individual title, despite acknowledging that the idea of individual title doesn't exist within tribes.[83]

j) Māori audiences were "sold" the benefits associated with Crown title – secure and peaceable possession for generations to come - but this was patently not the objective of the reform.[84] The Native Land Court was not established with the intention of keeping Māori land, rather it was intended to assess which land was available (and indeed to make it available) for Pākehā settlement.[85]

k) The native land legislation of the 1860s which established the Native Land Court was intended to open the market in Māori land to private purchasers and was drafted entirely with private alienation in mind (the Crown having withdrawn from purchasing at this time).[86]

l) By the time the Native Land Court came to this district, the Crown was again heavily involved in seeking to purchase Māori land. In this district (at least until the 1880s), title determination and land alienation (to the Crown) were so closely entwined as to be inseparable.[87]

m) The earliest applications for title determination in this district were made in 1879 – Whitikau, Whakapaukpākihi and Te Wera. These were all the result of preliminary sale and purchase agreements reached beforehand with government land purchase agents. [88]

[81] Stirling, p 399
[82] Stirling, p 405
[83] Luiten part 1, p 21
[84] Luiten part 2, p 422
[85] Luiten part 2, p 25
[86] Luiten part 2, p 422
[87] Luiten part 2, p 421
[88] Luiten part 2 p 422

n) Early applications for title determination arranged by Land Purchase Commissioner Wilson were made on the strength of hapū agreements to alienate their land to the Crown (albeit by lease rather than by sale).[89] Government incentives held out to the vendors included the undertaking to pay for the survey and to reserve to them a percentage of land.[90]

o) Where lands were contested within the inquiry district, the court's determination of title was "less than the objective or robust judicial investigation of customary law it purported to be."[91]

p) The Court was improperly motivated and lacking in transparency. Luiten points to the Whitikau and Whakapaupakihi title investigations as "at best, a patronising attempt to conciliate traditional adversaries. At worst, the decision favoured a Crown ally while ensuring the Government gained possession of the valuable road frontage".[92] She also refers to Chief Judge Fenton's unexplained dismissal of Te Whakatōhea's application for rehearing Whitikau as "extraordinary."[93]

q) Luiten refers to a "lack of rigour applied to the difficult task of discerning the truth of competing claims" which "only seemed to encourage further licence" on the part of the Court and the Court's "apparent unconcern for customary take." [94]

r) The Court ignored the reality of overlapping and complex customary interests in favour of passing large tracts of land as a single block in order to reduce survey costs (Oamaru being such an example).[95]

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

[89] Luiten part 2, p 422
[90] Luiten part 2, p 427
[91] Luiten part 2, p 423
[92] Luiten part 2, p 423
[93] Luiten part 2, p 423
[94] Luiten part 2, pp 423-424
[95] Luiten part 2, p 424

t) Luiten also hints at the Court's over-simplification of whakapapa in the course of the title investigations and says that "The Court's exercise of conscribing individuals into equally fixed 'hapū' lists of owners was to 'tax Te Whakatōhea whakapapa into the twentieth century." [96]

u) Following determination of title to the Oamaru block, Oamaru lands were purchased incrementally by Land Purchase Officer Richard Gill (a monopoly buyer due to Crown pre-emption being in place at this time) in the form of undivided relative interests of individual registered owners and a take-it-or-leave-it offer of 2 shillings per acre. Te Whakatōhea vendors had already paid for the survey of Oamaru in land. There was no consideration for landlessness let alone any provision for reserves.[97]

v) Obtaining Crown title to customary lands within the inquiry district proved "a costly, destructive and distressing ordeal" for Te Whakatōhea.[98]

w) In 1876 Ngāti Rua were awarded 11 acres Lot 338 in Ōpōtiki Township. The hapū requested many times for title to be issued. The Crown argued that these lands were conditional, to be occupied during good behaviour only and then revert back to the Crown. Finally, title was issued in 1910 for Ngāti Rua.[99]

Survey charges

x) Title determination at once rendered tribal lands into liabilities, primarily because of the expense of the requisite block survey.[100]

y) The government used survey as an alternative means (to direct purchasing) to enable it to obtain Māori land. From the late 1870s, the government's emphasis changed from purchase to survey, reflected in legislation which provided for the recovery of survey costs incurred by the Government to be recouped in land.[101]

[96] Luiten part 2, p 424
[97] Luiten part 2, p 427
[98] Luiten part 2, p 426
[99] Luiten part 1, pp 155-169
[100] Luiten part 2, p 426
[101] Luiten part 2 p 426

z) The example of Oamaru block is instructive – the large block survey got the land into court, but the resulting partition between interested hapū added another half as much again to the survey bill. Te Whakatōhea lost some 29% of the block to the government for a survey of their land they had not asked for, nor authorised. [102]

aa) The location of the Crown's interest at the point of partition was invariably made by the Survey Department without any consultation by the former or current owners.[103]

bb) Non-sellers were also required to pay pro-rata survey costs for resurveying the Crown's partitioned land from the 1890s onward.[104]

cc) By 1928, many Ōpape titles were burdened with survey debt in excess of their valuations, and many more were burdened with survey debt in excess of one-third of their value.[105]

dd) Much of these costs were for surveys ill-suited to the land being surveyed and based on arbitrary and unsuitable partition orders or road orders of the Native Land Court[106] – a "heedless expense" imposed on the Māori owners. [107] Such high debts made consolidation and development impossible.[108]

(V) INADEQUATE RESERVES AND PROTECTIONS AGAINST ALIENATION OF RESERVES

55. The Crown failed to ensure that sufficient Ngāti Ruatakena lands and resources were set aside as inalienable reserves for the present and future needs of Ngāti Ruatakena.

Particulars

a) The New Zealand Settlements Act 1863 did not contain legislative provisions for tribal reserves. It was not until 1867, four years after the legislation that

[102] Luiten part 2, p 426
[103] Luiten part 2, p 428
[104] Luiten part 2, p 431
[105] Stirling, p 223
[106] Stirling, p 225
[107] Stirling, pp 226-228
[108] Stirling, p 230

had enabled confiscation, that provision was made for the reservation of land within confiscated districts from those from whom it had been taken. [109]

b) The Crown took on the role itself of determining entitlement to the reserves, rather than the judicial investigation of customary rights in open court available outside of the confiscation district, the beneficiaries of 'returned' reserves were decided by the Crown's agent on the ground.[110]

Ōpape Native Reservation

c) The Ōpape Reserve was formed on lands that had been previously occupied by Ngāti Rua.[111] The number moved onto the land was nearly double the number of Ngāti Rua who had previously occupied the same lands.[112]

d) In 1866, Te Whakatōhea were forced to relocate entirely Ōpape. This was before any legal provision for the reservation existed.[113]

e) The shift of Te Whakatōhea onto the reservation at Ōpape resulted in their impoverishment. This was in contrast to the prosperity of Pākehā who were now occupying Ōpōtiki.[114]

f) The Ōpape reserve was not of good quality and at best 'second class land.'[115] Only 200 acres of the land were ploughable – this now being for 6 hapū.[116]

g) Although it was allocated to Māori in the early 1870s, it was not until the early 1900s that the Native Land Court held a title investigation for the block. In the meantime, Ōpape reserve retained its legal status as Crown land due to the confiscation proclamation extinguishing Māori customary title[117]

h) The question of how the reserve would be distributed of shared among the hapū was not address until 1879 (over 10 years after the hapū had first been

[109] Luiten part 2, pp 24-25
[110] Luiten part 2, p 28
[111] McLellan, p 95
[112] McLellan 95
[113] Luiten part 1 pp 65 - 66
[114] Crocker, p 64
[115] Crocker, p 62
[116] Luiten part 1, p 65
[117] Bassett & Kay, p 34

shifted onto the land). [118] The lengthy time to finalise the Ōpape reserve resulted in internal disagreements and frustrations.[119]

i) In contrast, Ngai Tamatea were given "land of excellent quality", whereas tangata whenua who were banished to marginal lands in Ōpape.[120]

Tribal Reserves from Purchases

j) The allocation of Tribal Reserves, carved out of blocks purchased by the Crown, was another Crown Policy used to ensure that Māori would sell their lands and ultimately extinguish customary title.[121]

k) The increasing value of reserve land was used to persuade Māori to accept a nominal price for their lands, therefore weighing the market in favour of the Crown.[122] Tribal reserves were also regarded as the first step towards individualization of title.[123]

l) The Crown would promise to reserve ample portions of the land for the hapū's present and prospective wants and needs. In reality, the reserves were often not made at all, and when they were, they were very small portions poorly defined.[124] Furthermore, these supposedly inalienable lands were often purchased, sometimes in a matter of months.[125]

m) Reserves were not intended to permanently prevent the alienation of Māori land, but simply delay it. The object was to give a longer time and better chance for Māori to assimilate to European ways before they will "settle down to the poverty and necessity for labour to which most will come".[126]

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[118] McLellan, p 98
[119] Crocker p 62, p 79
[120] Luiten part 1, p 248
[121] Luiten part 2, p 34.
[122] Luiten part 2, p 432
[123] Luiten part 1, p 22
[124] Luiten part 1, p 19-22
Luiten part 2, p 34

[125] Luiten part 1, p 20.
[126] Luiten part 1, p 23

n) The requirement was that Māori would be left with land "sufficient to support their maintenance". However, this requirement was only 50 acres per head.[127]

o) Māori reserves were therefore used by the Crown to ensure landlessness and to assimilate Māori to the European ways.[128]

p) Where reserves were granted, there were restrictions making them inalienable for large periods of time, leaving Māori unable to benefit (e.g through lease).[129]

q) In 1880, it became the duty of the Native Land Court to inquire into whether restrictions on alienation was warranted based on the sufficiency of land held by the owners. In order to remove the restrictions on alienation, the Native Minister had to be satisfied that there was "ample sufficient" land for their present and future maintenance.[130]

Unequal Treatment

r) In 1874, a group from Upper Wairoa, Ngai Tamatea, were relocated onto lands in the inquiry district and awarded 334 acres of "excellent quality" in Ōpōtiki. Official records say it was because Ngai Tamatea were not welcome home, but coincidently the Crown was appropriating their homelands in Upper Wairoa, made much easier by having the hapū in Ōpōtiki. Despite various attempts to return home, the Crown used various tactics (including long delays in issuing title) to ensure Ngai Tamatea stayed put in the inquiry district.[131] Ngai Tamatea's experience provides further insight into the Crown's provision of reserves generally in the inquiry district. Ngai Tamatea were given "land of excellent quality", whereas tangata whenua were banished to marginal lands, far from Ōpōtiki, in Ōpape.[132]

s) In 1868 the Crown also relocated a large group from Te Arawa to provide military services in the area and cement Crown control.[133] The men were

[127] Luiten Part 2, p 33
[128] Luiten part 1 , p 23.
Luiten part 2, p 433
[129] Luiten part 2, p 432
[130] Luiten part 2, p 433
[131] Luiten part 1 pp 234-248.
[132] Luiten part 1 p 248
[133] Luiten part 1 p 249.

promised 25 acres each upon completion of their service. After their service they tried to return home but the Crown used similar tactics to ensure the men did not leave. Finally, after nearly 10 years, the government used the Confiscated Lands Act 1867 to award land at Ōhiwa and Waiōtahe to the Te Arawa men.[134]

Delays in issuing Title

t) The non-issue of title to the reserves, including Ōpape and Hiwarau, in the nineteenth century was deliberate: it meant that these reserves remained the property of the Crown. The disarray and lack of Crown concern characterised the inquiry district as a whole. [135]

u) The long delay in issuing title and conditional nature of tenure indicates it was deliberate. [136]

(VI) FAILURE TO COMPENSATE OR REMEDY NGĀTI RUATAKENA LANDLESSNESS

56. The Crown failed to adequately remedy the state of landlessness of Ngāti Ruatakena and failed to adequately compensate for the Crown's failure to ensure sufficient land was retained in hapū ownership for the present and future needs of Ngāti Ruatakena.

Particulars

Commissions of Inquiry

a) Following the Sim Commission (1928), it was two decades before recommendations for compensation were actually paid by the Crown.[137]

b) While the numerous Māori petitions and complaints regarding confiscated land did eventually result in commissions of inquiry being established, these proved to be ineffective and inadequate because:

[134] Luiten part 1 p 274.
[135] Luiten part 1 p 248.
[136] Luiten part 1 p 171.
[137] Luiten part 1 pp 65 - 66

i. the goal of the Stout-Ngata Commission (1908) was to identify what further land could be extracted from Māori hands;

ii. The Stout-Ngata did not look at the issue of what should be done to remedy landlessness [138]

iii. Crown reaction to the Jones Commission (1920) was constrained and limited as did not want to open the question of compensation for raupatu generally[139]

iv. Sim Commission (1928) focused on whether the confiscations exceeded what was fair and just; it didn't go back to the core question of whether the raupatu was legitimate,[140]

v. The Sim Commission made the problematic finding that if natives did not resist the armed forces there wold not have been any excuse for confiscating their lands[141] i.e., Te Whakatōhea resistance was characterised as hostility and aggression rather than self-defence.

b) Māori continued to seek compensation in the form of return of land, while the Crown would not consider this and thought only in terms of financial recompense. [142]

(VII) CROWN PURCHASE POLICY AND PRACTICE

57. The Crown pursued policies and practices specifically designed to undermine Ngāti Ruatakena chiefly authority, and Māori customary law, over Ngāti Ruatakena lands in order to facilitate the Crown acquisition of Ngāti Ruatakena lands.

58. The Crown land purchase negotiations and transactions for Ngāti Ruatakena lands included sharp and unfair practices. Among other things Ngāti Ruatakena individuals were paid minimal amounts for these lands, were not adequately consulted and were often paid in installments (sometimes over a period of years). The Crown failed to recognize and acknowledge the tribal ownership of Ngāti Ruatakena lands and Ngāti Ruatakena were often not adequately negotiated with

[138] Crocker, p 69
[139] Crocker p 69
[140] Crocker p 75
[141] Crocker, p 75
[142] Crocker p 79

or informed of such sales, the Crown preferring to deal with a handful of individuals who were not necessarily representative of all of Ngāti Ruatakena.

59. Ngāti Ruatakena further allege that the Crown conducted and concluded land purchase negotiations prior to the determination of title in the Native Land Court.

60. Ngāti Ruatakena also claim that later they had to pay rates to local bodies, on which they were not represented, for services they did not receive.

Particulars

Crown Purchase Policy

a) The transfer of lands 'a waho' out of tribal ownership from 1879 onwards was undertaken entirely by Crown purchase.[143] The Crown entered into agreements for land purchase without considering potential landlessness of Māori or the need to provide sufficient reserves.[144]

b) In the late 19th century and beyond, the overarching imperative of Crown Policy was to transfer as much land as possible out of Māori hands.[145] The extinguishment of customary title was a key feature of Crown Policy in the nineteenth century.[146]

c) Early pre-emptive Crown purchasing may have been done more transparently, but once agreements were obtained, the land would be transferred to a 'committee' of owners (to then effect the already agreed to alienation). This calls into question the integrity of the Court process and also meant that any owners who did not agree to the sale were dispossessed with no means of recourse.[147]

d) The purchase of individual shares, devoid of any wider hapū mandate, became standard government practice from the mid-1880s.[148]

[143] Luiten part 2 426
[144] Luiten part 2, p 427
[145] Luiten part 1 p 39
[146] Luiten part 1 p 18
[147] Luiten part 2, p 428
[148] Luiten part 2, p 427

e) Crown purchasing agent tactics became less transparent over time in the face of widespread resistance to sale and competition from the private sector.[149]

f) Rather than compete with the private sector on the open market from 1865, the Government used its statutory powers to maintain a virtual monopoly. Unlike private traders, the State could partake in pre-title negotiations which, once proclaimed, debarred anyone else from transacting for the same land, initially for two years and later, indefinitely. Lands under lease to the Crown could not be sold to anyone else. [150]

g) Crown purchase officers operated outside the law but were supported by the Government in doing so. Purchase practices from 1873 onwards included purchasing individual interests from hapū members prior to title determination, and partitioning Crown interests in the acquired land. [151]

h) The Crown endorsed the approach of advancing money to individuals before their title was determined. Oftentimes, the individuals receiving money were not endorsed by the hapū or were the wrong people. [152]

i) By 1890s, Crown interest in purchasing Māori land was reignited and crown pre-emption returned. Subsequently, 80% of land in the Inquiry District was purchased by the Crown.[153]

j) In 1908, Whakatōhea was left with only 23-acres of mostly inadequate land per person. [154]

k) Despite the Stout-Ngata commission finding that Whakatōhea did not have sufficient lands remaining after Raupatu, the Crown continued to purchase land from them, rendering them essentially landless.[155]

Purchase Prices

[149] Luiten part 2, p 428
[150] Luiten part 2, p 429
[151] Luiten part 2 p 95
[152] Luiten part 2 p 95
[153] Luiten part 2, p 395
[154] Stirling 271
[155] Stirling 67

l) The prices paid by the Crown were significantly lower than what private purchasers were willing to pay[156]

m) Observers described that land was being stripped from Māori at a merely "nominal value".[157]

n) There was an inherent conflict of interest in that the valuation department determined the price the native department should pay for the land[158]

o) Crown purchase prices did not allow for the value of timber to be taken into account.[159]

p) Crown pre-emption meant that Māori could not obtain a fair price for their land. Prices in this district offered by the Crown were low even by its own standards.[160]

Crown Leasing

q) Māori could not obtain a fair price for their lands, as any lands leased to the Crown could also not be on sold.[161]

r) A Native land Court hearing held in December 1873 determined the title to 100,000+ acres of land spreading from the Waioeka river to the Motu river – known as the "Motu Lands".[162]

   i. The outcome of this hearing was a Crown lease of 150,000 acres extending from the Motu and Waioeka rivers for 200 pounds p.a. rising every 5 years 50 pounds to 400 pounds. The Māori owners were obliged to repay the cost of survey at 100p p.a. at the 15th year. 500 acres was reserved for the Māori owners on the bank of the Motu at Kaitaura.[163]

[156] Stirling, p 66
[157] Stirling, p 66
[158] Stirling, p 67
[159] Stirling, p 68
[160] Luiten part 2, p 429
[161] Luiten part 2 429
[162] Luiten part 2 page 57
[163] Luiten part 2 63

ii. This price point was too low for the value of the land and the reserves were insufficient.[164]

s) In 1908, Whakatōhea was left with only 23-acres of mostly inadequate land per person. [165]

t) Despite the Stout-Ngata commission finding that Whakatōhea did not have sufficient lands remaining after Raupatu, the Crown continued to purchase land from them, rendering them essentially landless.[166]

(VIII) PUBLIC WORKS TAKINGS

61. The Crown adopted a policy of compulsory acquisition of Māori lands for various public works without adequate consultation with, or compensation for, Ngāti Ruatakena.

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

63. The Crown failed to consider and exhaust all potential options, such as leasing or some other legal mechanism by which title to lands could be held by Ngāti Ruatakena subject to public use, before taking land for public works.

Particulars

Ōmarumutu Native School – first site

a) The first school site (corner Herema Road and SH 35) was legalised before title had issued to the to the Ōpape M reserves and was therefore treated as Crown land, rather than land taken under Native Schools Act or Public Works Act ("**PWA**"). Nevertheless, it was deducted from the land set aside as a reserve.[167]

b) When the acquisition of a new school site occurred and the old site was no longer needed, the Director of Education saw no need to offer it back to the

[164] Luiten part 2 74
[165] Stirling 271
[166] Stirling 67
[167] Wai 1750, #A29, Basset, Heather and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023, p 172

owners of the surrounding Māori land.[168]

c) The site was handed over to the Native Departments and was then cancelled and 'made available for disposal'. The site was eventually purchased by the Native Department and became part of the Ōpape Development Scheme[169]

d) The Education Department began the process of finding a new site in 1938.

Omarumutu Native School – second site

e) Wiremu Nikora, the original owner (of whom the named claimant Tāwhirimātea Williams, is a descendant) made it clear he did not want to sell his land as it was the only piece of land he had and he was a man with seven children[170]

f) However, the Headmaster continued to write to him to pressure him to provide the site because 'the block was the most suitable site in the locality to meet the requirements of a new school'.[171]

g) It is not clear that it was the only suitable site in the area as there had been an earlier site that was proposed but it was not pursued due to its use as a stock paddock.[172]

h) There does not appear to have been consultation with the community about this as a possible site.[173]

i) Eventually Wiremu Nikora only agreed to provide the site due to the threat of it being taken under the PWA.

j) Compensation was not paid for approximately 8 months, despite a request by Wiremu Nikora that he was in hospital and needed the money to support his family.[174]

[168] Bassett & Kay, p 178
[169] Bassett & Kay, p 179
[170] Bassett & Kay, p 181
[171] Bassett & Kay, p 181
[172] Basset & Kay, pp 180-181
[173] Bassett & Kay, p 181
[174] Bassett & Kay, p 186

k) The sum was payable to the District Māori Land Board.[175]

l) In 1986, an exemption to the offer back to the original owners was approved on very dubious grounds.[176] The Crown later admitted that "the decision to exempt the property from offer back may not have on reflection been the correct one"[177] and that the Ministry of Works 'incorrectly advised the Department of Lands and Survey that the property could be disposed of on the open market.[178]

m) The original owners of the land were never contacted about the sale of the land.[179]

n) The Crown then decided to enter into a private treaty to sell the land to someone else who was supposedly a "representative of the former owners" – but there were no proper grounds for this assumption.[180]

o) The failed purchaser received compensation of $33,000 as settlement for the Crown's error yet Tāwhirimātea Williams only received a cheque to cover his solicitor's costs and had to pay market value to purchase the property back.[181]

Ōpape Reserve Roads

p) In 1879, two roads were surveyed through the Ōpape reserve – a coast road and an inland road. No further steps were taken to legalise the road at this time.[182]

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

[175] Bassett & Kay, p 187
[176] Bassett & Kay p 190
[177] Bassett & Kay p 196
[178] Bassett & Kay, p 198
[179] Bassett & Kay, p 195
[180] Bassett & Kay, pp192-193
[181] Bassett & Kay pp 199-200
[182] Bassett & Kay, pp 37

awarded, the main road lines were excluded.[183]

r) Some of the Ōpape Reserve divisions were left landlocked (Ōpape 4, 6 and 8) when roads were surveyed through the reserve. When the Crown subdivided its own lands for settlement it always ensured that each division had a legal access.[184]

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

i. The surveyed line of the road (surveyed in 1880 at the time of surveying the reserve) heading out of Omarumutu was unsuitable and the road board complained.[185]

ii. In 1887, Pākehā land owner Gaskill sought a road line along the Waiaua River.[186]

iii. In 1892 Ngāti Rua wrote to the Native Minister asking to widen the road to Poverty Bay which was not suitable and dangerous for vehicles and horses, and that the hapū were unable to bring out their crops.[187] Despite this, the Native Department merely noted that "nothing could be done".[188]

iv. Prior to the titles being properly issued (which didn't happen until 1904), local authorities were told the road would have to be taken under the Public Works Act, which meant paying compensation, something they were reluctant to do.[189]

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

[183] Bassett & Kay, p 34
[184] Bassett & Kay, p 36
[185] Bassett & Kay, p 42
[186] Bassett & Kay, p 42
[187] Bassett & Kay, p 43
[188] Bassett & Kay, p 44
[189] Bassett & Kay, p 42

to contribute towards the work in either cash or labour.'[190]

vi. An 1895 account discussed travelling on the beach from Omarumutu to Opotiki and having to wait for the tide to recede.[191] The coast road appears to have been nothing more than an unformed path through the sandhills[192], a road (on paper only) running along the beach which was "impassable".[193]

vii. Even in 1932, driving on the new road through Ōpape was described as "narrow and tortuous".[194]

Motu Road (the inland road through the Ōpape Reserve)

t) The original 1880 survey required multiple corrections which were undertaken in the form of a series of small deviations between 1909 – 1911.[195]

u) The Road was surveyed under a warrant (allowing 5% of land to be taken without compensation) from the Governor dated 16 January 1909. It does not appear that the necessary notice was given to the owners at this time regarding this survey and the deviations.[196]

v) There were no follow up Gazette notices regarding the taking of land for the road at this time.[197]

w) When the Māori Land Court surveyed the subdivision of Ōpape 3, 4, 5 and 6 it laid out road lines.[198]. The subdivision road lines had the status of Māori land[199] meaning the Crown had no responsibility to improve or maintain the roads.

x) Most of these were not proclaimed as public roads until much later, 1934.[200] However, when a Pākehā owner wanted the road to his property improved, it

[190] Bassett & Kay, p 43
[191] Bassett & Kay, p 62
[192] Bassett & Kay, p 62
[193] Basssett & Kay, p 65
[194] Baseett & Kay, p 67
[195] Bassett & Kay, p 47
[196] Bassett & Kay, p 47
[197] Bassett & Kay, p 50
[198] Bassett & Kay, p 50
[199] Bassett & Kay, p 52
[200] Bassett & Kay, p 52

was proclaimed a public road.[201] Eventually in 1939, the roads traversing Ōpape 3, 4, 5 and 6 were declared public roads.[202]

y) In 1943 a proclamation was issued which legalised all the various road takings through Ōpape 3, 4, 5 and 6 (these roads formed part of the main highway system in the district.[203] No compensation would have ever been required for any of these roads.[204]

z) When Ōpape 1, 2 and 3 were partitioned by the NLC between 1910 and 1920, the subdivision plan which was surveyed included a route that was further inland.[205] It seems that this was considered a replacement for the original 1880 road line through the reserve as the usual notice and payment of compensation requirements for a PWA taking were considered but not used.[206]

aa) In 1922, the Court made an order confirming the new road lines that had been surveyed along the coast and making a recommendation to the Minister of Lands that it should be a public road. Under these sections, no compensation was required to be paid for the land used for the road.[207] The coast road totaled an area of approx. 33 acres.[208]

bb) In the 1960s and 70s deviations and upgrades to SH 35 through Ōpape were made to provide more direct routes.[209] There is nothing to indicate arrangements for prior consent with the owners.[210] This is the first time we are aware of compensation being paid to owners of the Ōpape Reserve for land taken for roads through the Ōpape Reserve. It was the responsibility of the Māori Trustee to distribute the compensation[211] and even to negotiate the amount of compensation.[212]

[201] Bassett & Kay, p 52
[202] Bassett & Kay, p 58
[203] Bassett & Kay, p 60
[204] Bassett &Kay, p 61
[205] Bassett & Kay, p 62
[206] Bassett & Kay, p 62
[207] Bassett & Kay, p 65
[208] Bassett & Kay, p 66
[209] Bassett & Kay, p 67
[210] Bassett & Kay, p 67
[211] Bassett & Kay, p 68
[212] Bassett & Kay, p 70

cc) A major deviation through the Ōpape 1 subdivisions was taken in 1973. This created the current line of SH35, replacing the hairpin route around Ōpape Marae and along the Ōpape Stream.[213] The area of land totalled approx. 8 acres.[214] Records relating to the negotiation and distribution of compensation for this were not able to be found.[215]

dd) Māori Trustee staff were sceptical as to whether it was even economic to distribute the compensation when it was for a small amount and to be divided between large numbers of owners.[216]

Ōpape Coast Road

ee) The original 1880 coast "road" was ever actually formed into a road. However, when the new route inland was laid off by the Native Land Court as part of partitioning the various blocks, the original 1880 road was never closed and therefore has remained a legal road, though never formed. [217] Significant portions are currently held as road reserves vested in the Opotiki DC which give legal access along the beachfront across Māori owned blocks and at the Ōpape end a short section has been sealed as a public beach access and public carparking area.[218]

ff) Today the former coach road over the headland is vested in the Opotiki DC and is known as the Tauturangi Walkway. Even though the legal status is as a "road reserve", it is clearly not being used for this purpose.[219]

(IX) CROWN ADMINISTERED DISTRICT LAND BOARD

64. The Crown operated District Māori Land Boards and through such Boards, failed to adequately consult or obtain proper consent from the individuals or chiefs of Ngāti Ruatakena before alienating large amounts of lands.

65. The Crown through District Māori Land Boards failed to adequately check when

[213] Bassett & Kay, p 71
[214] Bassett & Kay, p 72
[215] Bassett & Kay, p 73
[216] Bassett & Kay, p 69
[217] Bassett & Kay, p 73
[218] Bassett & Kay, p 74
[219] Bassett & Kay, p 76

alienating lands whether the beneficial hapū owners of the lands had sufficient other lands for their reasonably foreseeable present and future needs**.**

Particulars

Māori Land Boards

a) The Māori Land Boards were first established by the Māori Land Settlement Act 1905.[220]

b) The Māori Land Boards replaced the Māori Land Councils which had been established under the Māori Lands Administration Act 1900. These Councils were elected by Māori.[221]

c) In 1905, these elected Councils were replaced by a three-member committee appointed by the Governor (only one of which was required to be Māori). [222] The goal of the 1905 Act was to make more Māori land available for settlement than had been the case under the 1900 Act.

d) In 1913, this was reduced to two board members being the Native Land Court Judge for the district and his Registrar. This meant the Māori Land Boards were Pākehā institutions with no direct involvement from Māori.[223]

e) The original Māori land Boards of the 1900 therefore became "Pākehā institutions" in which Māori "no longer had any direct involvement".[224]

f) In this district, the Waiariki District Māori Land Board operated (pursuant to the Native Land Act 1909 and its amendments). The Board was a "dominant feature" of Crown and private purchasing from 1909-1952.[225]

g) Under the 1909 Act, if a block had 10 of fewer owners it could be alienated by the District Māori Land Board as agent or trustee for the owners. The Board

[220] Stirling, p 136
[221] Stirling, p 136
[222] Stirling, p 136
[223] Stirling, p 136
[224] Stirling, p 136, quoting the late Alan Ward.
[225] Stirling, p 135

could also call a meeting of owners to consider an offer of alienation.[226]

h) Every alienation of land required confirmation by the district Māori Land Board. However, in practice, this provided little restriction:[227]

   i. The Board was short-staffed;

   ii. The statutory restrictions were rarely assessed in any detail (e.g. - there is no example of a purchase being refused due to a vendor being rendered landless[228];

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

i) Where land had more than 10 owners, the prospective purchase could apply to the Board to summon a meeting of owners to be attended by a Board representative. The quorum for such meetings was very low. The Board would call the meetings over and over until the necessary quorum was met or the Crown resorted to purchasing the individual shares.[229]

j) The effect of the 1909 Act was that the Board could effectively arrange the sale of Māori land without consulting all the owners and certainly avoiding gaining the consent of all the owners. Doubt has been expressed on whether owners were adequately informed about the meetings.[230]

k) The only recourse for owners opposed to alienation was to lodge a "memorial of dissent" at the meeting or formally submit one within a very short timeframe. [231] The Board was not obliged to heed this however, as it was required to consider the "public interest" and the "interests of the owners" (as it interpreted them to be) when confirming the resolution of owners. [232]

[226] Stirling, p 137
[227] Stirling, p 138
[228] Stirling, p 142
[229] Stirling, p 139
[230] Stirling, p 139
[231] Stirling, p 139
[232] Stirling, p 139

l) Once the Board confirmed the resolution at a meeting of owners it became the agent for the owners in completing the alienation.[233]

(X) LAND DEVELOPMENT SCHEMES

66. The Crown established, maintained, administered, and managed Land Development Schemes on Ngāti Ruatakena lands without proper or adequate consultation and/or without providing proper and adequate mechanisms for Ngāti Ruatakena participation, expression of concerns with and/or input into the management of the Schemes.

67. The Crown failed to properly advise Ngāti Ruatakena of the full implications of the inclusion of their lands in the Development Schemes.

68. The Crown failed to properly provide all of the benefits that were promised to Ngāti Ruatakena as a result of the Development Schemes.

69. The Crown took over ultimate management of the Ngāti Ruatakena land in the Development Schemes to the exclusion of the land management rights of the Ngāti Ruatakena landowners.

Particulars

Development Schemes

a) From 1894, the Advances to Settlers Office provided Pākehā with cheap finance and advice to develop farming operations, while Māori were effectively excluded as a result of the terms.[234] Māori in the district received no finance from this office, while thousands of Pākehā were assisted to the tune of millions of pounds.[235]

b) Māori did not have access to a similar form of finance until the development schemes were financed in the 1930s.[236] putting them almost two generations behind their Pākehā neighbours in the establishment of farms.[237]

[233] Stirling, p 139
[234] Stirling, p 272
[235] Stirling, p 273
[236] Stirling, p 272
[237] Stirling, p 273

c) Farmers taking up a farm on a development scheme had to pay rent to the land's owners (which may or may not have included the farmer). The benefit (in the form of rent) was minimal as the improvements effected by the farmer during the term of the leas e would have to be compensated for by the owners from the low rental income[238] – in some cases the sinking fund set up to repay the lessee at the end of the lease amounted to half of the owners' rental income.[239]

d) The goal of the development schemes which was to create a multitude of individually owned units was never realistic from the start. Most farmers who were operating as part of the scheme were in debt due to the uneconomic sized blocks they were dealing with. [240]

e) There were huge delays in resolving the leases for the farmers and the land's owners. Without these arrangements being in place, neither party had security of tenure or income. [241]

f) Vast tracts of land in the Ōpape block were proclaimed and designated as part of a development scheme under the Māori Affairs Act 1953. The Crown then failed to follow through and actually implement the development of these blocks. The land subsequently fell into a poor state yet the owners were prevented from being able to do anything due to the continuing designation.

   i. In 1965 Wiremu Nikora observed that the Ōpape lands left in an incomplete state of development had "deteriorated fast" since Māori Affairs "withdrew nearly ten years ago" from the area.[242]

   ii. In 1966, Wiremu Nikora wrote to the Minister of Lands to complain about press coverage referring to "idle lands" owned by Māori in the Opotiki district. He retorted that the supposed idleness of their lands was due entirely to Māori Affairs and the land remaining subject to the development designation under the Māori Affairs Act 1953 and "it is

[238] Stirling, p 287
[239] Stirling, p 340
[240] Stirling, p 314
[241] Stirling, p 332
[242] Stirling, p 318

no fault of ours that development is not operating". He went on to say "I now have pleasure in offering to your department for development all the Whakatōhea idle lands or not under proper or reasonable tenure".[243] However, this offer was not taken up because the Crown had since changed policy direction and was content to leave the Whakatōhea lands languishing.[244]

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

i. In 1959 (some 20 years after the height of the development scheme policy) Wiremu Nikora later told Walter Nash (Native Minister) that Whakatōhea had been promised consolidation would help them, and that their lands at Ōpape were the next to be consolidated after the Tōrere consolidation scheme was completed in 1937. Instead, "without warning, development came instead and in order to pacify my angered people", consolidation of tiles under development "was again promised" in order to meet the needs of development. As of 1959, Wiremu Nikora added, "we are still waiting" and still seeking some way to consolidate the morass into which their titles had been dragged by the Māori land legislation and by half-pai land development.[245]

Title Consolidation

h) Land development and title consolidation were two closely related Crown policies.[246]

i) Consolidation entailed large scale exchange of individual Māori interests with an intent to amass sufficient interests to merit the partitioning out of those interests as a properly surveyed and individualised title in order to facilitate the subsequent development of that land as an economic unit.[247] However,

[243] Stirling, p 318
[244] Stirling, p 318
[245] Stirling, p 262-263
[246] Stirling, p 211-212
[247] Stirling, p 212

this process involved converting a customary interest in a specific piece of land to a mathematical share in a wider area, a share that could be moved around and aggregated with other shares into an individual block which could then be located in a place that bore little resemblance to the customary basis of the original right to the land.[248]

j) Consolidation was used by the Crown in in blocks where it had acquired diverse undivided individual interests in large blocks (or groups of blocks) to consolidate its own interests. [249] The Crown took advantage of consolidation to obtain pay back to itself for debts such as survey liens or rates charging orders against Māori land, taking a portion of the Māori land in question to cover these debts and adding it to the Crown's land holdings.[250] Stirling says that the remission of survey charges to the Crown soon emerged as a key factor in consolidation schemes.[251]

(XI) MAORI TRUSTEE/PUBLIC TRUSTEE

70. The Crown, through the establishment and operation of the Office of the Māori Trustee, failed to adequately protect the retention of Ngāti Ruatakena lands by empowering the Māori Trustee to facilitate the subdivision and sale of Ngāti Ruatakena lands.

71. The Crown failed to adequately monitor the activities of the Māori Trustee and correct or provide relief in situations where the Māori Trustee caused prejudice to Ngāti Ruatakena.

Particulars

Conversion / compulsory acquisition of uneconomic interests

a) The Māori affairs policy from the 1950s was focused on "title improvement" – a central plank of which was conversion.[252]

b) Under the Māori Affairs Act 1953, the Māori Trustee could purchase individual

[248] Stirling, p 212
[249] Stirling, p 211
[250] Stirling, p 211
[251] Stirling, p 214
[252] Stirling, p 355

interests from those prepared to sell which purchasing funded from the conversion fund – a fund acquired through the sale of Māori interests.[253] Unlike other alienations this did not require the confirmation of the Māori Land Court.[254]

c) The Māori Trustee could then sell those interests to any Māori (or descendant of any Māori), to a Body Corporate, or to the Crown for Māori housing or land development.[255]

d) The worst part of the conversion policy was that "uneconomic" interests (worth less than 10 pounds) would be compulsorily vested in the Māori Trustee at the point of succession or partition (quite possibly unbeknownst to the owner).

e) Undivided interests were therefore taken in this piecemeal way "until sufficient had been acquired to bestow upon one fortunate Māori". It was not even necessary that the transferee be a pre-existing owner in the title, and in a number of instances, they were not.[256]

f) The policy was presented as a way for owners to consolidate their disparate interests in an individual owner.[257]

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

h) Stirling has identified around 50 titles in this district that were affected by the conversion policy and had shares compulsorily acquired by the Māori Trustee. Most of these titles were in the Ōpape subdivisions, but they also included Hiwarau, Whakapaupaikihi and Whitikau.[258] At least two titles were alienated

[253] Stirling, p 357
[254] Stirling 357
[255] Stirling, p 357
[256] Stirling, p 368
[257] Stirling, p 357
[258] Stirling, p 362. Pp 364-365

completely as a result of conversion.[259]

i) There are a number of examples of the Māori Trustee acquiring fractionalized shares and holding on to them for years to no apparent end, until later transferring them to other owners without achieving anything other than a "fractional interests being shuffled between owners like cards in a stacked deck."[260]

j) The Māori Trustee facilitated a tenant in the Whakapaupakihi block (Mangatu Incorporation) to acquire a large ownership share in the block through acquiring converted shares and selling them to Incorporation. [261]

k) In 1966, Jack Hudson (a boiler mechanic at the Opotiki hospital) applied to purchase Ōpape 1F7 (11 acres) being one of 63 owners. Mr Hudson said he had contacted nine other owners and none objected to his purchase. Wiremu Nikora opposed the purchase for himself and other owners but offered no evidence so the Court vested the land in the Māori Trustee to "alienate to best advantage" on the basis that this was "for the benefit of owners". While Nikora tried to prevent the sale, no other owners had input into the decision and the sale via the Māori Trustee was confirmed by the Court. [262]

(XII) MAORI TRUST BOARD

72. The Crown in breach of article two of the Treaty of Waitangi and the principles of the Treaty generally, unilaterally asserted and imposed their own systems of law and governance structures, purportedly for the benefit of Whakatōhea to manage, receive and administer Ngāti Ruatakena lands.

73. The Crown instituted the Māori Trust Boards Act 1955 with the effect of undermining the tino rangatiratanga of Ngāti Ruatakena by making a Trust Board subject to Crown policy and control, and hence acted in breach of the Treaty of Waitangi. The implementation of this device undermined the mana of the rangatira within the rohe and displaced Ngāti Ruatakena, along with other hapu

[259] Stirling, p 379
[260] Stirling, p 369
[261] Stirling, pp 373-379
[262] Stirling, p 208

by state-defined institutions such as the Whakatōhea Māori Trust Board (a Trust Board under Māori Trust Boards Act 1955). Ngāti Ruatakena allege that the introduction of the legislation and the Trust Board was yet another mechanism in which the Crown marginalised and continues to marginalise hapu authority.

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

84. Ngāti Ruatakena as a hapū have received no direct benefit from the lands that have been vested in the Trust Board and by virtue of the fact that it was vested in the Trust Board have been deprived of the ability to generate their own economic development through forestry and other purposes.

85. Ngāti Ruatakena allege that the compensation that was paid did not reflect how Whakatōhea had been negatively affected by the injustices of the Crown including the waging war and the extensive and unjustified confiscation of Whakatōhea lands.

86. Ngāti Ruatakena further allege that the Crown has failed to ensure that Māori Trust Boards created pursuant to the Māori Trust Board Act have diligently followed the accountability processes contained therein and therefore has failed to honour its obligation of active protection as guaranteed by the Treaty of Waitangi to Ngāti Ruatakena.

86. The Crown, in failing to recognise its obligation of good faith under the Treaty of Waitangi, and by using a Trust Board structure as the recipient of Ngāti Ruatakena lands has prevented the enjoyment of economic prosperity by the hapu of Ngāti Ruatakena.

(XIII) SOCIO-ECONOMIC DISADVANTAGE

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

75. The Crown failed to provide proper and adequate education, health services, roading, housing, employment and other entitlements to Ngāti Ruatakena, to the detriment of their socio-economic position. The Crown's failure to deliver such entitlements has forced many Ngāti Ruatakena people to move away from their ancestral lands.

76. The Crown introduced the Native Land Court, which had immediate and long-term socio-economic impacts on Ngāti Ruatakena.

Particulars

Socio-economic disadvantage

a) Due to land confiscation, the native land court and Crown purchasing policy and practice, Te Whakatōhea had, by 1900, become primarily a labour force in an agricultural business belonging to others.[263]

b) Due to the inadequacy of the Ōpape and Hiwarau reserves, Te Whakatōhea struggled to grow enough food for themselves let alone to sell and make a profit.[264]

c) As a result of the incorporation and associated leasing of 'surplus' lands in the 20th century (e.g. Waiohoata, Awaawakino and Ōpape 1), the Crown failed to enable owners to utilise their lands rather than lease to others. [265]

d) Illness was prevalent in the area, linked to the lack of food from the poor quality land.[266]

e) In terms of citizenship, the chronic delay in issuing title had significant economic and social impacts on hapū. In 1883 their eagerness to secure their own partition, Ngāti Muriwai paid for the survey of Ōpape 3A. Thirty years later they were forced to pay again in order to secure their title at Waiaua.[267] Similar experiences

[263] Luiten part 1 p 281.
[264] Luiten part 1 p 280.
[265] Luiten part 1 p 282
[266] Luiten part 1 p 285
[267] Luiten part 1 p 299.

detailed for Ngai Tama, Ngāti Rua.[268]

f) The government refused after multiple requests to fix the road at Ōpape after they forced all of Ngai Tama to relocate there. They couldn't farm food or animals properly and couldn't transport anything due to the dangerous road.[269]

g) Māori in the area suffered from impoverishment and disease. Teachers would repeatedly request medical supplies, to no avail. At one point a teacher asks for a girl with tuberculosis to be sent to a health department for a time, a month later she died.[270]

h) On top of the hardship and habitual disease, tangata whenua were also presented with a host more subtle reminders of their marginalized/lesser status in the new order.[271]

i) Māori children were treated badly at school, recounts of teachers "flogging" the natives, too severely and using rough language towards them. [272]

[268] Luiten part 1 p 300.
[269] Luiten part 1 p 292.
[270] Luiten part 1 p 295.
[271] Luiten part 1 p 297.
[272] Luiten part 1 p 298.

(XIV) FAILURE TO PROTECT NGA TAONGA TUKU IHO O NGĀTI RUATAKENA

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

78. The Crown pursued assimilationist policies in education resulting in the near extinction of Te Reo Māori and tikanga among Ngāti Ruatakena.

79. The Crown prohibited the use of Te Reo Māori in schools thereby derogating the right of Ngāti Ruatakena to maintain and develop their language, culture and customs. Ngāti Ruatakena individuals were punished for speaking Te Reo Māori and therefore denied a basic human right fundamental to their identity.

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

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

82. The Crown failed to preserve tikanga Māori, failed to ensure Ngāti Ruatakena retained full exclusive and undisturbed possession of their taonga and failed to provide for the practice of their religion and tikanga.

(XV) RATING ISSUES

83. The Crown empowered local authorities to levy rates on Ngāti Ruatakena land causing an unfair burden upon Ngāti Ruatakena.

84. The Crown empowered the Māori Land Court to place charging orders on Ngāti Ruatakena lands to enforce the non-payments of rates.

Particulars

a) The rating of Māori land was first introduced in 1871 by the Highway Board for the provision of roads,[273] despite non-provision of roads and inadequacy or safety issues with the roads provided.[274]

b) Māori faced difficulties paying rates due to limited ability to develop land and difficulties with tenure.[275]

Levying Rates

c) Despite Crown knowledge that Māori had difficulty paying rates, in 1883, Māori land was valued at up to 3x its value.[276]

d) In the 1930s, the Ōpōtiki County Council ignored the legislation governing the land development scheme which exempted lands set down for development from rates until they were able to sustain payment after development. Instead, the Crown chose to levy rates on the land regardless.[277]

e) When levying rates, the County Council had little interest in whether the land was capable of sustaining rates payments and the legislation require this to be considered this when levying rates.[278]

Non-Payment and Notice

f) Oftentimes, Māori landowners were not made aware of and would not know that there were accumulated rates owing on their land until it was

[273] Wai 1750, #A26, Woodley, Suzanne, *Local Government and Māori Land Issues Report, 1871 – 2021*, CFRT, 30 September 2022, p 575
[274] Woodley, p 521
[275] Woodley, p 25
[276] Woodley, p 26
[277] Woodley, p 406
[278] Woodley, p 404

being alienated to recover the debt,[279] or a charging order was made which incurred a 1-% non-payment levy.[280]

g) Throughout the 1880s-1890s, rates demands were sent to the Colonial Treasurer, rather than being sent directly to Māori owners, as under The Crown and Native Lands rating Act 1882.[281]

h) Notices for demands were gazetted in te reo but in order for Māori to know whether they were required to pay rates, they had to physically inspect a roll at the county, town or road board office.[282]

i) In the 1910s, Māori could be sued for unpaid rates, placing the burden of unpaid rates on one or two owners where land is held in multiplicity.[283]

j) The **Rating Amendment Act 1910 and 1913** allowed land to be alienated for non-payment of rates by the relevant local board or the public trustee and didn't require ministerial consent.[284]

k) The **Native Land Rating Act 1924** allowed the rating authority to apply for a charging order on the title of lands where rates were owed and made Māori land liable for rates equivalent to European land.[285]

l) Between 1927 to 1971, despite Ōpōtiki County Council having the ability to exempt Māori land from rating, only a small proportion of land was exempted and no comprehensive assessment of Māori land and its ability to support rates was undertaken.[286]

m) In the late 1980s, the Magistrate Court was used to prosecute non-payment of rates. This court did not have the same legislative jurisdiction

[279] Woodley, p 28
[280] Woodley, p 405
[281] Woodley, p 27
[282] Woodley, p 27
[283] Woodley, pp 35-37
[284] Woodley, p 35
[285] Woodley, p 38
[286] Woodley, p 48

as the Native Land Court which could assess the title and whether it had the capacity to sustain rates payments.[287]

n) The **Local Government (Rating) Act 2002** adopted a rates remission policy for unoccupied Māori land, however, land that was deemed unproductive still had rates levied until at least 2015.[288]

(XVI) LOCAL GOVERNMENT

85. The Crown failed to ensure that local authorities established a relationship with Ngāti Ruatakena that was consistent with the Treaty and its principles.

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

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

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

Particulars

a) In 1871, the Roading Board was established as the first local government authority.[289] The establishment of local authorities was driven by Pākehā settlers with little support from Māori.[290]

Representation Issues

b) The establishment of the first local authorities in the district had little Māori involvement and the legislation establishing these bodies didn't

[287] Woodley, p 517
[288] Woodley, p 520
[289] Woodley, p 63
[290] Woodley, p 570

require Māori participation.[291] Nor was there any requirement for hapū or iwi representation.[292]

c) In 1899 a lack of title prevented Māori from voting and the government showed a lack of desire to change this system.[293] This included an inability to vote in local elections.[294]

d) As a result of Māori being unable to vote, this excluded them from participating in local government, despite a clear desire from Māori to participate.[295]

e) Furthermore, Māori living on the reserves were completely excluded from local government. Because they lived on a Reserve, they were exempt from rates, and only rate payers could be elected to local government.[296]

f) Even where title was formalized, where title was in multiple ownership, only one person was entitled to vote regardless of the number of owners on the title. [297]

g) Despite Māori comprising 12% of the town, in the early 1900s, no Māori were elected to the Borough Council until 1956.[298]

h) Those with more valuable land were effectively entitled to extra votes. The bias in favour of wealthy land-owners tended to favour Pākehā and continued until 1974.[299]

i) The number of Māori Councillors has always been disproportionate to the Māori population in the district.[300]

Inadequate Provision of Services

[291] Woodley, p 570
[292] Woodley, p 572
[293] Woodley, p 572
[294] Woodley, p 569
[295] Woodley, p 571
[296] Luiten part 1, p 293.
[297] Woodley, p 572
[298] Woodley, p 571
[299] Woodley, p 573
[300] Woodley, p 571

j) Services provided by Local Government to Māori communities is limited. Gravel roads are prevalent and there are no council provided water or sewerage systems.[301]

k) Despite Māori land being rated on the basis of their use of Council services, Māori have been requesting Council services since as early as the 1930s and those services are still inadequate.[302]

(XVII) RESOURCE MANAGEMENT AND ENVIRONMENTAL ISSUES

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

90. The Crown failed to properly provide for and recognize the intellectual and property rights to flora and fauna, foods, rongoā, and other taonga within the lands and waters possessed and enjoyed by Ngāti Ruatakena.

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

92. The Crown further failed to protect the physical and spiritual health of these seas, harbours, lakes, rivers, waters and waterways of Ngāti Ruatakena.

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

94. The Crown has also failed to recognise, protect, and provide for the customary rights, interests, and associations of Ngāti Ruatakena by applying the ad medium filum aquae common law rule and/or by failing to remedy any prejudice caused by the application of that common law rule.

95. The Crown has failed to properly recognise, protect, and provide for the

[301] Woodley, p 521
[302] Woodley, p 521

ownership of Ngāti Ruatakena in water.

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

97. The Crown has failed to protect the interests of Ngāti Ruatakena by the compulsory taking of land on the banks and in the vicinity of the lakes, harbours, beaches, rivers, and waterways for reserves and other 'public purposes'.

98. The Crown has failed to adequately recognise and protect the wahi tapu of Ngāti Ruatakena in and around the harbours, rivers, lakes, waterways, and other Ngāti Ruatakena taonga.

99. The Crown has, through its Land Confiscation Acts, caused and permitted the total loss of communal tribal titles to the lands of Ngāti Ruatakena including the seabeds, harbour-beds, and river beds.

100. The Crown has, through its various Native Lands Acts, caused and permitted the fragmentation and individualisation of communal tribal titles to the lands of Ngāti Ruatakena.

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

102. The Crown has failed to adequately recognise, respect, or provide for the right of Ngāti Ruatakena to development relating to their taonga.

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

104. The Crown usurped Ngāti Ruatakena te tino rangatiratanga over their lands, forests, fisheries, rivers, waters, waterways and other taonga within their customary lands and has failed to adequately provide for or recognize their role as kaitiaki over such rivers and waterways.

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

Particulars

Resource Management and Environmental Issues

a) No record of consultation with Māori over the development of gas pipelines, despite the route going through archaeological sites important to Māori.[303]

b) Lands that were of such poor farming quality (forfeited when settlors walked off) became the initial nucleus for the conservation lands trough to today.[304]

    i. "Conservation" land was always managed by government agencies, no record of input from Māori. Māori couldn't exercise their role of kaitiakitanga.[305]

c) From the 1950's government agencies worked together to determine what to do with hill country lands. The clearance of forest on steep hillsides had exposed pumice-veneered, thin soils to erosion during high intensity rainstorms, with sediments clogging the lower reaches of the Waioweka River. Department of lands and NZ Forest divided up the land into their respective zones. There is no indication that these committees took into account Māori's viewpoint.[306]

d) In 1982 the Department of Lands produced a management plan for Waioeka Gorge Scenic Reserve. The plan involved no policies to include Māori except

[303] Wai 1750, #A24, Alexander, David, *Scoping Report on Environmental Claims Issues*, c.1840 – 2010, CFRT, March 2022, p 49.
[304] Alexander p 52
[305] Alexander pp 51-55
[306] Alexander p 56

"to have regard for tribal wishes regarding the use of these sites. However more research is needed if this policy translated into practical cooperation. No record of consultation with Māori during the plan preparation, and the draft was never sent to any iwi. No submissions from hapū or iwi were received."[307]

e) A longstanding feature of Crown policy was to develop Māori owned land so it was economically productive. Such developments caused environmental impacts. A large part of Ōpape reserve was largely forested and not suitable for agricultural development so the native forest was removed and replacing it with exotic forest to generate income from the land, irrespective of the damage this might cause to the land over the long-term.[308]

f) Waterways in the district have been modified by European developments.[309] Some waterways have dried out completely due to farming.[310]

g) Ad medium filum aquae.[311]

h) A 2017 report has identified 2 land drainage schemes supported by the Crown, to enable low-lying lands alongside waterways to be drained and brought into agricultural production at Waiotahe and Kukumoa.[312]

i) No consultation with iwi and hapū in developing flood protections of the river.[313]

j) Various government plans have recognised the role Māori have as kaitiaki,[314] but it is far from clear this has moved through into practice.

k) Motu river national water conservation order – no consultation with iwi or hapū[315]

[307] Alexander p 61.
[308] Alexander p 72.
[309] Alexander p 77.
[310] Alexander p 78
[311] Alexander p 78
[312] Alexander p 80
[313] Alexander pp 83, 84 and 87
[314] Alexander p 91
[315] Alexander p 95

l) Taonga species:

i. Whitebait – Waioweka and Ōtara estuary is recorded as the largest area suitable habitat for whitebait spawning in the Bay of Plenty but stock grazing on the spawning grounds has diminished production of whitebait.[316]

ii. Tuna (eels) have been hunted commercially since the 1960's[317]

iii. Weka – numbers decreasing[318]

iv. Koako are no longer present, although they still survive (albeit in decline) in Te Urewera. They were exterminated in the inquiry district by rat and possums.[319]

v. Native species have mostly declined while the Crown assumed responsibility, while many of the population declines took place on lands directly managed and administered by the Crown. Despite a variety of legislation, the Crown has largely been unable to provide the protection or conservation that was needed.[320]

m) Introduced species:

i. Many species were introduced into NZ with recreational, sporting or commercial harvesting intentions have all become pests to indigenous forests and land.[321]

ii. Have caused significant damage to the native forests.[322]

iii. Iwi and hapū were never consulted about whether they wanted them here or what to do once they were here.[323]

[316] Alexander p 100
[317] Alexander p 101
[318] Alexander p 101
[319] Alexander p 102
[320] Alexander p 102.
[321] Alexander p 104.
[322] Alexander p 110.
[323] Alexander p 104.

iv. Legislation was enacted to provide for introducing species to the inquiry district.

v. Pigs, possums, red deer, goats, trout were among some. [324]

vi. Even land was reserved for "acclimatisation" purposes[325]

vii. The Crown was directly involved and an active liberator of introducing these species into NZ without any consultation with Māori.[326]

n) The Crown assumed control of all the waterways and harbours.[327]

o) RMA avoidance of individual iwi and hapū perspectives is not consistent with Te Tiriti.[328]

p) The council involves iwi and hapū on an irregular basis, at times decided by council, usually only to get feedback at particular stages set out in legislation. Frustrating for iwi and does not foster a healthy relationship.[329]

q) Consultation with iwi and hapū is based around Pākehā ideas of consultation and is at odds with Māori view.[330]'

r) Flooding has severely increased in Waioweka and Ōtara due to forest clearance.[331]

s) The crown approach to waterways has largely been single-purpose (flood protection only) rather than multi-purpose or aimed at protecting the mauri of the rivers too. Iwi and hapū involvement is minimal despite having strong interests in seeing environmentally healthy rivers.[332]

[324] Alexander pp 104-116
[325] Alexander p 114
[326] Alexander pa 115.
[327] Alexander p 123
[328] Alexander p 133
[329] Alexander p 135.
[330] Alexander p 138
[331] Alexander p 143
[332] Alexander p 143.

t) The clearance of native forest for farmland or for exotic forestry, and allowing the introduction of non-native animals and plants, has put the remaining forest under considerable stress. Depleted forests are also not good at holding the land in place, meaning more soil erosion and more release of sediments into waterways, which also results in more flooding.[333]

u) It is a race against time to control and ideally remove the introduced animals and plants present in native forest lands so as to give these forests the best chance of survival.[334]

[333] Alexander p 147.
[334] Alexander p 147.

D. TE MAMAE- THE PREJUDICE

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

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

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

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

(d) The marginalisation of Ngāti Ruatakena within their own ancestral lands;

(e) The loss of Ngāti Ruatakena life and property;

(f) The disintegration and decay of Ngāti Ruatakena chiefly and tribal authority;

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

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

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

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

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

E. TE UTU- THE RELIEF

Remedies Sought

107. That the prejudice as aforesaid was and remains such that Ngāti Ruatakena are entitled to immediate and substantial reparations such as to restore the mana and economic base of the Ngāti Ruatakena people.

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

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

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

(c) Pursuant to sections 8A to 8HJ of the Treaty of Waitangi Act 1975 the return to Ngāti Ruatakena of all State-owned Enterprise lands within their customary tribal territory, including any former State-enterprise land, subject to Section 27B of the State Owned Enterprises Act 1986;

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

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

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

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

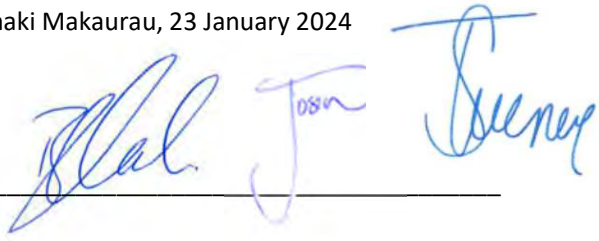
(h) An immediate apology by, and on behalf of, the Crown and its agents;

(i) Full and comprehensive monetary reparation;

(j) Costs; and,

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

DATED at Tāmaki Makaurau, 23 January 2024



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