IN THE WAITANGI TRIBUNAL

WAI 1750
WAI 1827

IN THE MATTER of The Treaty of Waitangi Act 1975

AND of claims in the North-Eastern Bay of Plenty Historical Inquiry (Wai 1750)

AND a claim made by Rachel Maunganui Wolfgramm and Tania Haerekiterā Wolfgramm, on behalf of themselves and their whānau and the descendants of Rangihaerepō (Wai 1827)

AMENDED PARTICULARISED STATEMENT OF CLAIM FOR WAI 1827 - DESCENDANTS OF TE RANGIHAEREPŌ

Dated 23 January 2024

WACKROW PANOHO & ASSOCIATES

Level 5, 50 Kitchener Street
Po Box 461
DX CP 20503
AUCKLAND
Coral Panoho-Navaja / Raewyn Clark / Josi Witehira/ Solita Turner
Ph. (09) 379 5026
E mail: coral@wpalawers.co.nz / raewyn@wpalawyers.co.nz / josi@wpalawyers.co.nz /solita@wpalawyers.co.nz

Contents

MAY IT PLEASE THE TRIBUNAL

A. INTRODUCTION

1. This claim is brought by Rachel Maunganui Wolfgramm and Tania Haerekiterā Wolfgramm on behalf of themselves and their whānau and the descendants of Rangihaerepō ("the claimants").

2. The claimants recognise relationships with Te Whakatōhea and consider the claim to be interrelated to matters outlines in the Wai 87 Statement of Claim, which the claimants support.

3. The claimants are Māori and meet the requirements for bringing a claim as set out in section 6(1) of the Treaty of Waitangi Act 1975.

4. The Claimants allege that individuals and whānau, including the Wolfgramm Whānau as descendants of Rangihaerepō located in the North-Eastern Bay of Plenty,have been and remain prejudicially affected by the ordinances, Acts, Regulations, policies, practices, acts and omissions of the Crown contained in this statement of claim in breach of Te Tiriti o Waitangi ("Te Tiriti") and its principles.

B. TE RANGIHAEREPŌ

5. Rangihaerepō was one of seven rangatira who were signatories of Te Tiriti o Waitangi in 1840. Rangihaerepō signed Te Tiriti on behalf of Te Whakatōhea. This claim is made on behalf of his descendants as a natural grouping, o ngā hau aroha o Te Whakatōhea.

6. Rangihaerepō is linked to the hapū of Nga Tamahaua, Te Upokorehe, Ngati Rua and Ngati Patumoana.Hineiahua, the daughter of Rangihaerepo, was named after the eponymous ancestress Hineiahua from whence Ngati Patumoana derived their name.

7. Rangihaerepō's mana whenua extended across the lands of Te Whakatohea, and included a kainga on the island of Hokianga, circa 1920.[1]

8. The claims as outlined below refer extensively to Te Whakatōhea on the understanding that the practices, acts and omissions affected Te Whakatōhea as a whole, and that this included Te Rangihaerepō and the whānau and descendants of Te Rangihaerepō. Therefore, reference to Te Whakatōhea more generally should be taken to include Te Rangihaerepō and his descendants.

9. The Claimants reserve the right to further particularise the following Historical Treaty Claims and amend them as required.

C. TE KAREME – NGĀ HARA O TE KARAUNA

I. LANDLESSNESS

10. At 1840, Te Rangihaerepō and his people held considerable customary interests within the inquiry district.

11. The Crown failed to prevent, rectify, or remedy the rapid alienation of Te Whakatōhea lands so that the remaining land in hapū ownership is now insufficient for the present and future needs of the descendants of Te Rangihaerepō.

12. As a result of the Crowns actions in implementing mechanisms such as the Native Land Court today ngā uri o Te Rangihaerepō have no customary lands held in accordance with tikanga Maori and no land or tūrangawaewae in their names.

13. The Crown failed to adequately remedy the state of landlessness of the descendants of Te Rangihaerepō and Te Whakatōhea generally, and failed to adequately compensate for the Crown's failure to ensure sufficient land was retained in tribal ownership for their present and future needs.

[1] Kahotea, Dr. Desmond Tatana, *Whakatōhea and the Common Marine and Coastal Area 1840-1865*, 1 October 2019, at p 0956 – filed as part of Wai 1750, #A019, CIV-2011-485-817 Whakatōhea (Edwards) priority application and the Common Marine and Coastal Area Act 2011 1840 – 2019, 13 October 2021

Particulars

Landlessness

a) The Crown's definition of sufficient land holdings to support maintenance was an arbitrary 50 acres per head.[2] By 1908, Whakatōhea was left with only 23 acres of mostly inadequate land per person.[3]

b) In 1908, the Stout Ngata Commission confirmed that Whakatōhea had 'very little land left in their hands'[4]

c) Te Whakatōhea, including the descendants of Te Rangihaerepō, filed numerous petitions and letters with the Crown referring to the dire circumstances in which they found themselves post-raupatu.[5]

d) In the late 1800s, Whakatōhea were focused on mere survival, they had been forced into the wage economy. [6] This was a dramatic contrast to their situation pre-raupatu (which Walzl describes) where they were landowners, business / ship owners.

e) The situation by the early 1900s included that Māori were now leasing land from Europeans to grow crops[7]

Missionary Land Purchases and Old Land Claims Commission

f) On 14 January 1840, the Crown issued a proclamation: All private land transactions after this date were invalid unless founded on a Crown grant.

---

[2] 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
[3] Wai 1750, #A32, Stirling, Bruce, *Twentieth Century Land Legislation and its Impacts*, North Eastern Bay of Plenty Inquiry, CFRT, November 2023, p 271
[4] 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
[5] Crocker, pp 43-44
[6] Crocker, pp 43-44
[7] Crocker, p 74

These “old land claims” were investigated by the Land Claims Commission (“**OLCC**”), established in 1841. [8]

g) The OLCC continued to hear and validate old land claims despite knowing that Māori had not fully understood the consequences of alienation.[9]

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 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. In 1844, the OLCC heard Missionary 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).[12]

   ii. The Pakihi block deed, dated 27 January 1840 recorded the agreement of Titoko, Te Rangihaerepō and 22 other signatories to give a home to Brown, Stack and Wilson – the three missionaries stationed in Tauranga at this time.[13]

[8] 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, p 41.
[9] Wai 1750, #A30, Walzl, Tony, *War and Raupatu 1840 – 1871 Report*, Waitangi Tribunal, 15 March 2023, p 1055
[10] Luiten part 1, pp 17 and 41.
[11] Luiten part 1, p 42
[12] Luiten part 1, p 72
[13] Luiten part 1, p 42

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

iv. 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]

v. 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]

vi. 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]

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

k) Many years later, Crown agent Wilson (Jnr) used his father's purchase deeds to defeat valid claims for compensation to land and this was accepted by the Compensation Court.[19]

l) Again, at the time of the compensation court, the OLCC process also allowed the Roman Catholic Church and Crown agent Fredrick

[14] Walzl, p 53
[15] Walzl, p 67
[16] Walzl, p 67
[17] Walzl 53; Luiten part 1, pp 40-42.
[18] Walzl, p 167
[19] Luiten part 1, pp 60-61

Whitaker to successfully obtain Crown Grants for compensation claims lodged outside the timeframe prescribed by law:

i. The Church's claim of 4 acres in Ōpōtiki Township based on a deed dated 25 September 1841. Crown agent Wilson argued the deed was not a sale and purchase agreement, rather an agreement to occupy the house and grounds at Pakōwhai. The judge upheld the claim awarding the church an acre of land in the Ōpōtiki township being Lots 14, 16, 17 and the northern half of Lots 24 and 25.[20]

ii. Whitaker lodged a claim in 1867 for 2 acres of Ōpōtiki township called Nuku Tau Wau which he said was purchased from Te Rangihaerepō and Titoko on boxing day 1839. Despite not showing up to two hearings relating to this land, Crown Agent Wilson reached a direct settlement with Whitaker (his former boss) whereby he withdrew his claim in exchange for Lot 30 1 acre of Ōpōtiki township.[21]

II. INVASION AND WAGING OF WAR

14. The Crown unjustly invaded lands belonging to the descendants of Te Rangihaerepō and waged war against the people causing devastating effects.

15. The Crown, unjustifiably invaded Whakatōhea causing devastating effects on the descendants of Te Rangihaerepō, and their lands and resources.

16. The Crown, without just cause, waged war against Te Whakatōhea, including the descendants of Te Rangihaerepō, occupied their lands, and caused casualties and loss of lives and loss of property and possessions including all their homes, kainga, settlements, pā, urupā, wāhi tapu,and worldly possessions.

[20] Luiten part 1, pp 60-61.
[21] Luiten part 1, pp 61-62.

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

18. The Crown's forces, under the responsibility of the Crown, stole personal and other taonga and property of Te Whakatōhea individuals and failed to return such property.

19. The Crown waged war against Te Whakatōhea individuals without regard for their personal or spiritual welfare.

20. The Crown unjustly and indiscriminately labelled and stigmatised the whole of Te Whakatōhea as 'rebels' despite the descendants of Te Rangihaerepō never being in rebellion against the Crown.

21. The Crown improperly and without permission nor consent entered into the territories of Te Rangihaerepō, his descendants, and all Te Whakatōhea whānau and hapū.

22. The Crown invaded the territories of Te Whakatōhea in order to destroy, undermine, or subjugate their rangatiratanga, including Te Rangiherepō and the resistance to the unlawful loss of their lands and assets.

23. The Crown without permission nor consent constructed stockades and forts within the lands of Te Whakatōhea and used materials and resources from those lands.

<u>Particulars</u>

Waging War

a) On 4 September 1865, the Crown enacted Martial Law in Ōpōtiki.[22]

[22] Walzl, p 858

b) On 8 September 1865, the Crown unjustifiably invaded Whakatōhea causing devastating effects on nga uri o Te Rangihaerepō and on Te Whakatōhea lands, resources and people.

c) The justification for the invasion was to arrest the "murderers of Volkner". However, the Crown used military force on the entire population of Ōpōtiki.[23]

d) The Crown's purported terms of this invasion were that the people of Ōpōtiki were to surrender the murderers of Volkner and if they failed to do so, their land would be confiscated under the New Zealand Settlements Act.[24] No attempt was made to communicate these terms prior to the invasion. [25] The terms were not communicated until 9 days later.[26]

e) Instead of negotiating with Te Whakatōhea for the release of "the murderers of Volkner", the Crown chose instead to rely on the NZ Settlements Act and confiscate land as punishment for alleged individual criminal behaviour.[27]

f) All of Whakatōhea were treated as though they were in rebellion and guilty of Volkner's murder.[28] The Crown was also motivated to invade to quell what it deemed to be the "Pai Mārire insurgency".[29]

g) When engaging in conflict with Crown forces, Te Whakatōhea were acting reasonably and in defence of their lands.[30]

h) The Crown forces pillaged, stole and destroyed the wealth that Te Whakatōhea had built up through farming and trading over the previous decades.[31]

[23] Walzl, p 858
[24] Walzl, p 858
[25] Walzl, p 860
[26] Wai 1750, #A03, McLellan, John, *Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874*, Waitangi Tribunal, July 2020, p 77
[27] Walzl, pp 860 and 894
[28] McLellan, p 64
[29] McLellan, p 64
[30] McLellan, pp 77 and 86
[31] McLellan, pp 50-51

i) Members of the Crown military force took advantage of the invasion as an opportunity for personal enrichment and had little regard for the property and livelihoods of the people of Te Whakatōhea.[32]

j) The Crown engaged a "scorched earth" tactic, taking and/ordestroying nearly all of Te Whakatōhea's food and agricultural systems.[33]

k) There were 58 deaths among Whakatōhea during the landing and occupation of Opotiki by Crown forces.[34] Many more Te Whakatōhea whānau suffered severe injuries. The number of casualties was a significant percentage of the iwi's population.[35]

III. Confiscation

24. The Crown wrongfully, unjustly, and illegally confiscated 143,870 acres of Whakatōhea lands, including lands that rightfully belonged to Te Rangihaerepō and his descendants.

25. The Crown wrongfully and unjustly and 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.

26. The Crown wrongfully relocated the descendants of Te Rangihaerepō and other individuals of Te Whakatōhea from their traditional lands at Ohiwa and onto the Ōpape and Hiwarau Native Reserves thus restricting access to their traditional lands, waterways and resources and limiting their survival to those resources in close proximity to the Native Reserves.

27. The Crown wrongfully, unjustly and unfairly purported to extinguish, or extinguished, the customary title of Te Whakatōhea lands within the confiscation district.

[32] McLellan, p 52
[33] McLellan, p 52
[34] McLellan p 47, 64
[35] McLellan p 47

28. The Crown failed to acknowledge that Te Whakatōhea acted in self-defence of their property but rather wrongfully alleged that individuals were in "rebellion".

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

30. 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 individualised land ownership under the power of a Crown-based authority.

31. The Crown failed to return wāhi tapu and sacred sites to Te Whakatōhea.

32. The Crown failed to sufficiently compensate Te Whakatōhea for the confiscation of the hapū's lands and the losses of property and taonga.

33. The Crown has failed to recognise and provide any adequate relief for the devastation to the culture and spiritual well-being of Te Whakatōhea, including loss of life, loss of land, loss of resource and loss of economic wellbeing.

<u>Particulars</u>

Pre-Raupatu

a) Prior to 1865, the Bay of Plenty was a flourishing settlement with an active economy.[36] Profits made from trade were used to invest in public infrastructure and community-based government structures.[37]

b) Pākowhai, the main settlement of Whakatōhea, was described by one solider as being "covered with pigs and potatoes, with thousands of peach trees and 30,000 acres of flat land which was used for cultivation".[38]

[36] Walzl, p 280
[37] Walzl, p 282
[38] Walzl, p 858

c) Whakatōhea were "very rich" prior to 1865, having owned multiple ships, farming equipment and other supplies.[39] Approximately 30 schooners were owned by Māori in the Ōpōtiki area, which would make regular trips to and from Auckland and the Bay of islands to trade goods.[40]

Confiscation

d) 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.[41]

e) Crown legislation provided that once "rebellion" was identified, land could be confiscated from that Māori group.[42] However, the legislation concerning land confiscations was motived by facilitating land for settlement by Pākehā.

f) On 17 January 1866 the Bay of Plenty confiscation was declared.[43] The Crown's blanket approach to confiscation extinguished customary title and deemed all land Crown land within the District.[44]

g) The legislation which authorised confiscation of lands did not sufficiently define what a "rebel" meant so as to allow broad Crown discretion.[45] There was insufficient evidence of "rebellious" acts.[46]

h) The Crown enacted the New Zealand Settlements Amendment Act 1866 which they deemed could retrospectively 'validate'the confiscation.[47]

i) The amount of land taken under raupatu was disproportionate to what was necessary under the legislation.[48]

[39] Walzl, p 858
[40] Walzl, p 280
[41] McLellan, pp 71 and 85
[42] McLellan, pp 71 and 85
[43] Luiten part 1, pp 15-16, McLellan, pp 75 and 86
[44] Luiten part 1, p 10
[45] McLellan, p 76
[46] McLellan, p 19
[47] McLellan, p 72
[48] McLellan, p 86

j) 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.[49]

k) 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.[50] Awards were conditional on "maintaining loyalty" until 1 January 1870.[51]

l) 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.[52]

m) 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'.[53] There was no structure or transparency there was around these out of court arrangements.[54] A few years later, Wilson's judgement and methods when acquiring Māori land for the Crown were officially inquired into [55] further helping to support the conclusion that he was a "loose operator".

n) At the time of Wilson's private negotiations, conflict was ongoing in the district and travel and communication were therefore hampered.[56] Different hapū representatives would therefore not have had equal access to participate in

[49] McLellan p 91
[50] McLellan, p 82, p 102
[51] McLellan, p 102
[52] McLellan pp 83-84
[53] McLellan, p 84
[54] McLellan, p 92
[55] McLellan, p 89
[56] McLellan, p 93

these negotiations.[57] Wilson referred to the "absence of the bulk of the claimants" in the negotiations process.[58]

o) Wilson decided on the size of the reserve lands at Ōpape [59]. However, the basis of the information he was working from to make this decision was dubious at best.[60] Wilson's census appears to have been the basis to ascertain "the acreage due to each non-rebellious native who may be able to prove a claim."[61]

Compensation Court

p) 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).[62] At this time, conflict was still ongoing in the area. The Colonial Secretary decided whether the claim was "eligible" before forwarding the claim to the Court.[63]

q) 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.[64]

r) If a Te Whakatōhea claimant made a claim to land that had already been awarded to a Military settler, this was too bad and they couldn't get their lands returned. And if the claimant was successful, they would have to be awarded land elsewhere.[65]

[57] McLellan, p 93
[58] McLellan 98
[59] McLellan, p 98
[60] McLellan p 98
[61] McLellan p 106
[62] McLellan p 104
[63] McLellan, p 104
[64] McLellan, p 107
[65] McLellan, pp 107-109

s) The Maketū hearing (8 - 12 July 1867) included several claims to land in and around Opōtiki (a 2-day ride away).[66]

t) The ongoing hostilities and fighting meant some witnesses could not be present.[67] Failure of the claimant to appear resulted in the claim being dismissed.[68]

u) There was no legal representative for the Māori claimants as part of the Compensation Court hearings.[69] Crown agent Wilson organised the Māori witnesses to attend the hearing and provide evidence in relation to their claims.[70] Crown agent Wilson organised witnesses to dispute claims he did not support.[71] He was also compromised by being Special Commissioner and Crown Agent in the process.[72]

v) Admitting involvement with Pai Marire resulted in claims being dismissed.[73]

w) 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).[74]

x) The Compensation Court process pitted Māori against Māori and resulted in some Māori giving evidence against others solely to secure their own claims.[75]

y) In 1867, Te Wiremu Rangihaerepō's (Rangihaerepō's grandson) claim was defeated in court on the grounds of rebellion. He did not regard himself as a rebel, though he admitted to having 'run into the bush with the rebels' – with a loaded gun (i.e the fact of retreating into the bush with a gun was said to

[66] McLellan, p 109
[67] McLellan, p 110
[68] McLellan, p 116
[69] McLellan, p 109
[70] McLellan, p 110
[71] McLellan, p 116
[72] McLellan p 116
[73] McLellan, p 112
[74] McLellan, pp 114-115
[75] McLellan p 116

constitute "rebellion"). He made seven distinct claims for compensation. He was told by Judge Mair the court could do nothing for him and his seven claims were dismissed. Later, as an appeasement, Wilson arranged for him to be awarded Lot 387 Parish of Waiotahe, 40 acres.[76]

IV. NATIVE LAND LEGISLATION AND THE NATIVE LAND COURT

34. 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 Te Rangihaerepō and his descendants, without their proper consultation or consent.

35. The Crown, contrary to Māori custom and tikanga, and the Claimants' 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 individualised Pākehā fee simple title; promoting and facilitating the de-tribalisation of Māori; and

    c. promoting and facilitating the assimilation of Māori into Pākehā customs and practices.

36. The Crown established the Native Land Court without any proper consultation with or input from Māori generally.

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

38. The Crown established the Native Land Court within which title adjudication reduced customary hapū management over resources into ownership of

[76] Luiten part 1, p 263

individual interests, replacing variously layered customary land use rights with fixed boundaries over the land.

39. The Crown established the Native Land Court which had the effect of defeating chiefly and tribal authority and tino rangatiratanga.

40. 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.

41. The Crown established the Native Land Court that failed to properly inquire into Te Whakatōhea customary interests, nor recognise and provide for customary interests in hapū lands, forests, fisheries, waters and other taonga. In particular, the Native Land Court failed to inquire into and recognise the customary interests of the descendants of Te Rangihaerepō.

42. The Crown established the Native Land Court, which fostered debt andvarious 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.

43. The Crown forced Te Whakatōhea to pay survey costs associated with customary title investigations or partitions whether or not Te Whakatōhea wished to have their lands surveyed. Such costs were invariably repaid in land.

44. The Crown failed to protect Te Whakatōhea from excessive survey charges.

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

46. Through the imposition by the Crown of the Native Land Court process, Te Whakatōhea 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.

<u>Particulars</u>

a) The **Native Lands Acts 1862/1865** individualised title to Māori land intentionally destroying the "communistic character" of Māori. [77]

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.[78]

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).[79] 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).[80] The main intention of this act was "to facilitate the alienation (by lease, purchase or mortgage) of multiply owned land.[81] Under this Act, block committees had the authority to lease the land for a term not exceeding 30 years.[82]

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.[83] The Māori Land Boards were first established under this Act.[84]

[77] Crocker, p 62
[78] Luiten part 2, p 40-41.
[79] Stirling, p 16
[80] Stirling, p 16
[81] Stirling, p 49
[82] Stirling, p 48
[83] Luiten part 1 p 35
[84] Stirling, p 136

e) The **Native Land Settlement Act 1907** facilitated the lease, sale and settlement (by Pākehā) of Māori land. [85] This act provided for for proclamation under Part 1 of "land available for settlement" (irrespective of owners wishes).[86]

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.[87]

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.[88] 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.[89]

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 Māori land owners.[90] This policy was pushed through despite considerable opposition from Māori, including Māori of this district.[91]

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 did not exist for Māori.[92]

[85] Stirling, pp 6-7
[86] Stirling, p 97
[87] Stirling, p 66
[88] Stirling, p 66
[89] Stirling, p 136
[90] Stirling, p 399
[91] Stirling, p 405
[92] Luiten part 1, p 21

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.[93] 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.[94]

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).[95]

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.[96]

m) The earliest applications for title determination in this district were made in 1879 – Whitikau, Whakapaupākihi and Te Wera. These were all the result of preliminary sale and purchase agreements reached beforehand with government land purchase agents. [97]

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).[98] Government incentives held out to the vendors included the undertaking to pay for the survey and to reserve to them a percentage of land.[99]

o) Unsurprisingly (given prior Crown arrangements in relation to certain blocks of land), where lands were contested within the inquiry district, the court's

[93] Luiten part 2, p 422
[94] Luiten part 2 page 25
[95] Luiten part 2, p 422
[96] Luiten part 2, p 421
[97] Luiten part 2 p 422
[98] Luiten part 2, p 422
[99] Luiten part 2, p 427

determination of title was "less than the objective or robust judicial investigation of customary law it purported to be."[100]

p) 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".[101] She also refers to Chief Judge Fenton's unexplained dismissal of Te Whakatōhea's application for rehearing Whitikau as "extraordinary."[102]

q) The Court was improperly motivated and lacking in transparency. 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." [103]

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).[104]

s) The Court over-simplified whakapapa in the course of the title investigations. The Court's exercise of conscribing individuals into equally fixed 'hapū' lists of owners was to "tax Te Whakatōhea whakapapa into the twentieth century." [105]

t) Every court appearance cost money. In addition to hearing fees, order fees, survey fees, lawyer fees, there were associate costs with attending court in town: food and accommodation. Land court business imposed a financial burden hapū could not afford. Hapū were forced to do this again and again and again, for decades, with little guarantee of any finality.[106]

[100] Luiten part 2, p 423

[103] Luiten part 2, pp 423-424
[104] Luiten part 2, p 424
[105] Luiten part 2, p 424
[106] Luiten part 1, p 300

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.[107]

v) Obtaining Crown title to customary lands within the inquiry district proved "a costly, destructive and distressing ordeal" for Te Whakatōhea.[108]

Survey charges

w) Title determination at once rendered tribal lands into liabilities, primarily because of the expense of the requisite block survey.[109]

x) 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.[110]

y) 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. [111]

[107] Luiten part 2, p 427
[108] Luiten part 2, p 426
[109] Luiten part 2, p 426
[110] Luiten part 2 p 426
[111] Luiten part 2, p 426

z) 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.[112]

aa) Non-sellers were also required to pay pro-rata survey costs for resurveying the Crown's partitioned land from the 1890s onward.[113]

bb) 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.[114]

cc) 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[115] – a "heedless expense" imposed on the Māori owners. [116] Such high debts made consolidation and development impossible.[117]

V. INADEQUATE RESERVES AND PROTECTIONS AGAINST ALIENATION OF RESERVES

47. The Crown failed to ensure that sufficient lands and resources were set aside as inalienable reserves for the present and future needs of the descendants of Te Rangiherepō.

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 had enabled confiscation, that provision was made for the reservation of land within confiscated districts from those from whom it had been taken. [118]

[112] Luiten part 2, p 428
[113] Luiten part 2 431
[114] Stirling, p 223
[115] Stirling, p 225
[116] Stirling, pp 226-228
[117] Stirling, p 230
[118] Luiten part 2, pp 24-25

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.[119]

Ōpape Native Reservation

c) The Ōpape Reserve was formed on lands that had been previously occupied by Ngāti Rua.[120] The number moved onto the land was nearly double the number of Ngāti Rua who had previously occupied the same lands.[121]

d) In 1866, Te Whakatōhea were forced to relocate entirely Ōpape. This was before any legal provision for the reservation existed.[122]

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.[123]

f) The Ōpape reserve was not of good quality and at best 'second class land.'[124] Only 200 acres of the land were ploughable – this now being for 6 hapū.[125]

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[126]

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 shifted

[119] Luiten part 2, p 28
[120] McLellan, p 95
[121] McLellan 95
[122] Luiten part 1, pp 65 - 66
[123] Crocker, p 64
[124] Crocker p 62
[125] Luiten part 1, p 65
[126] Bassett & Kay, p 34

onto the land). [127] The lengthy time to finalise the Ōpape reserve resulted in internal disagreements and frustrations.[128]

i) Te Upokorehe individuals were awarded only 15 acres per head in the Ōpape reserve sub-divisions, the lowest of all the hapū.[129]

Hiwarau Native Reserve

j) In 1866/1867 Crown agent Wilson forced Te Upokorehe to relocate to Hiwarau Reserve (Lots 189 and 134) and Hokianga Island. These two lots together totalled just over 1000 acres, or just over 25 acres per head. [130]

k) Hiwarau was not good quality land. The greater part of the block was hillside, with a step ridge running the length of it, much of the flats below were swamp.[131] Only a small portion of the land was capable of cultivation. [132]Given the limited opportunities afforded by the reserves, most of the beneficiaries did not stay. By the mid 1890's only a handful of owners remained.[133]

l) Confusingly, towards the end of 1871 the government revised the ownership list for the Hiwarau reserve. The new list has had an additional 26 beneficiaries.[134] Many Te Upokorehe who were on the first list then excluded from the second list. Their applications for succession were dismissed as the court found they were not an owner, despite being on the first list and residing on the land at the time.[135]

m) Crown agent Wilson, and later in his role as Judge Wilson, continued to espouse the reserve as a provision for Te Upokorehe which led Te Upokorehe to hold the conviction that this reserve had been set aside for them.[136]

[127] McLellan, p 98
[128] Crocker p 62, p 79
[129] Luiten part 1, p 85
[130] Luiten part 1 p 173-183.
[131] Luiten part 1 p 188
[132] Luiten part 1 p 183.
[133] Luiten part 1 p 189.
[134] Luiten part 1 p 184.
[135] Luiten part 1 p 184.
[136] Luiten part 1 p 185

n) However, the list of owners drawn up by the Crown was based more on the political exigencies of the day than any customary rights.[137] The list of beneficiaries by 1874 was "an eclectic collection of locals who had survived the war". Unravelling the puzzle of entitlement to these reserves remains a contentious issue to this day. [138]

o) Two 25 acre lots of the Hiwarau land were then used as compensation court awards, the court allocation effectively becoming a deduction from the existing provision.[139]

p) In March 1898, an application was made to the Court for the definition of relative interests in the Hiwarau block.[140] The Court unfairly awarded three shares to each adult male, two shares to each adult female and a single share to each child listed in the 1874 gazette.[141] This was contrary to the Native Land Act 1873 which spelled out that the whole point of these reserves was that they were to be held 'in accordance with native custom and usage' meaning that the individual interests were deliberately left undefined.[142] The definition of relative interests was then immediately followed by an application for partition.

q) Hiwarau exposes the true irrelevance of the Crown's initial distinction between "loyals" and "rebels". In the second list this distinction was dropped all together.[143]

Delays in issuing Title

r) Not only had all their land been confiscated, the reserves they were forced to relocate to, hapū were confronted with the fact that they did not actually own the reserves they regarded as theirs. In some instances, they were told outright

[137] Luiten part 1 p 175
[138] Luiten part 1 p 175
[139] Luiten part 1, p 187
[140] Luiten part 1, p 192
[141] Luiten part 1, p 197
[142] Luiten part 1, p 197-198
[143] Luiten part 1 p 186.

they were on sufferance, their occupation of these "returned" lands challenged by local Pākehā and denied by the government.[144]

s) The non-issue of title in the nineteenth century was deliberate: it meant that these reserves remained the property of the Crown. The disarray and lack of Crown concern characterized the inquiry district as a whole.[145]

t) The long delay in issuing title and conditional nature of tenure indicates it was deliberate. [146]

Tribal Reserves from Purchases

u) 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.[147]

v) 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.[148] Tribal reserves were also regarded as the first step towards individualization of title.[149]

w) The Crown promised 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.[150] Furthermore, these supposedly inalienable lands were often purchased, sometimes in a matter of months.[151]

[144] Luiten part 1 p 299.
[145] Luiten part 1 p 248
[146] Luiten part 1 p 171.
[147] Luiten part 2 p 34.
[148] Luiten part 2 p 432
[149] Luiten part 1 p 22.
[150] Luiten part 1 p 19-22
Luiten part 2 p 34.

[151] Luiten part 1 p 20

x) The requirement was that Māori would be left with land "sufficient to support their maintenance". However, this requirement was only 50 acres per head (and was frequently ignored by Crown agents and the Court).[152]

y) Where reserves were granted, there were restrictions making them inalienable for large periods of time, leaving Māori unable to benefit (e.g through lease).[153]

z) 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.[154]

VI. CROWN PURCHASE POLICY AND PRACTICE

48. The Crown pursued policies and practices specifically designed to undermine the chiefly authority of Te Rangihaerepō and his descendants, and Māori customary law, over their lands in order to facilitate the Crownacquisition of Te Whakatōhea lands.

49. The Crown land purchase negotiations and transactions for Ngai Tama Haua lands included sharp and unfair practices. Among other things Te Whakatōhea individuals were paid minimal amounts for these lands, were not adequately consulted and were often paid in instalments (sometimes over a period of years). The Crown failed to recognise and acknowledge the tribal ownership of lands and the relevant hapū were often not adequately negotiated with or informed of such sales, the Crown preferring to deal with a handful of individuals who were not necessarily representative of the relevant hapū.

50. The Crown conducted and concluded land purchase negotiations prior to the determination of title in the Native Land Court.

51. Te Whakatōhea had to pay rates to local bodies, on which they were not represented, for services they did not receive.

[152] Luiten Part 2 p 33
[153] Luiten part 2 p 432
[154] Luiten part 2, p 433

Particulars

Crown Purchase Policy

a) The transfer of lands 'a waho' out of tribal ownership from 1879 onwards was undertaken entirely by Crown purchase.[155] The Crown entered into agreements for land purchase without considering potential landlessness of Māori or the need to provide sufficient reserves.[156]

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.[157] The extinguishment of customary title was a key feature of Crown Policy in the nineteenth century.[158]

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.[159]

d) The purchase of individual shares, devoid of any wider hapū mandate, became standard government practice from the mid-1880s.[160]

e) Crown purchasing agent tactics became less transparent over time in the face of widespread resistance to sale and competition from the private sector.[161]

[155] Luiten part 2, p 426
[156] Luiten part 2 p 427
[157] Luiten part 1 p 39
[158] Luiten part 1 p 18
[159] Luiten part 2, p 428
[160] Luiten part 2, p 427
[161] Luiten part 2, p 428

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 Crown 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. [162]

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. [163]

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. [164]

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.[165]

j) In 1908, Whakatōhea was left with only 23-acres of mostly inadequate land per person. [166]

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.[167]

Purchase Prices

[162] Luiten part 2, p 429
[163] Luiten part 2 p 95
[164] Luiten part 2 p 95
[165] Luiten part 2, p 395
[166] Stirling, p 271
[167] Stirling, p 67

l) The prices paid by the Crown were significantly lower than what private purchasers were willing to pay[168]

m) Observers described that land was being stripped from Māori at a merely "nominal value".[169]

n) There was an inherent conflict of interest in that the valuation department determined the price the native department should pay for the land[170]

o) Crown purchase prices did not allow for the value of timber to be taken into account[171]

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.[172]

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.[173]

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".[174]

s) 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.[175]

[168] Stirling, p 66
[169] Stirling, p 66
[170] Stirling, p 67
[171] Stirling, p 68
[172] Luiten part 2, p 429
[173] Luiten part 2 429
[174] Luiten part 2 p 57
[175] Luiten part 2 p 63

t) This price point was too low for the value of the land and the reserves were insufficient.[176]

VII. PUBLIC WORKS TAKINGS

52. The Crown adopted a policy of compulsory acquisition of Māori lands for various public works without adequate consultation with, or compensation for Te Whakatōhea and the descendants of Te Rangihaerepō.

53. 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.

54. The Crown failed to consider and exhaust all potential options, such asleasing or some other legal mechanism by which title to lands could beheld by Te Whakatōhea subject to public use, before taking land for public works.

Particulars

Ōpape Reserve Roads

a) 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.[177]

b) 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

[176] Luiten part 2, p 74
[177] Bassett & Kay, p 37

awarded, the main road lines were excluded.[178]

c) 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.[179]

d) 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.[180]

ii. In 1887, Pākehā land owner Gaskill sought a road line along the Waiua River.[181]

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.[182] Despite this, the Native Department merely noted that "nothing could be done".[183]

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.[184]

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

[178] Bassett & Kay, p 34
[179] Bassett & Kay, p 36
[180] Bassett & Kay, p 42
[181] Bassett & Kay, p 42
[182] Bassett & Kay, p 43
[183] Bassett & Kay, p 44
[184] Bassett & Kay, p 42

to contribute towards the work in either cash or labour.'[185]

vi. An 1895 account discussed travelling on the beach from Omarumutu to Opotiki and having to wait for the tide to recede.[186] The coast road appears to have been nothing more than an unformed path through the sandhills[187], a road (on paper only) running along the beach which was "impassable".[188]

vii. Even in 1932, driving on the new road through Ōpape was described as "narrow and tortuous".[189]

Motu Road (the inland road through the Ōpape Reserve)

e) The original 1880 survey required multiple corrections which were undertaken in the form of a series of small deviations between 1909 – 1911.[190]

f) 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.[191]

g) There were no follow up Gazette notices regarding the taking of land for the road at this time.[192]

h) When the Māori Land Court surveyed the subdivision of Ōpape 3, 4, 5 and 6 it laid out road lines.[193]. The subdivision road lines had the status of Māori land[194] meaning the Crown had no responsibility to improve or maintain the roads.

i) Most of these were not proclaimed as public roads until much later, 1934.[195]

[185] Bassett & Kay, p 43
[186] Bassett & Kay, p 62
[187] Bassett & Kay, p 62
[188] Bassett & Kay, p 65
[189] Bassett & Kay, p 67
[190] Bassett & Kay, p 47
[191] Bassett & Kay, p 47
[192] Bassett & Kay, p 50
[193] Bassett & Kay, p 50
[194] Bassett & Kay, p 52
[195] Bassett & Kay, p 52

However, when a Pākehā owner wanted the road to his property improved, it was proclaimed a public road.[196] Eventually in 1939, the roads traversing Ōpape 3, 4, 5 and 6 were declared public roads.[197]

j) 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.[198] No compensation would have ever been required for any of these roads.[199]

k) 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.[200] 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.[201]

l) 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.[202] The coast road totaled an area of approx. 33 acres.[203]

m) In the 1960s and 70s deviations and upgrades to SH 35 through Ōpape were made to provide more direct routes.[204] There is nothing to indicate arrangements for prior consent with the owners.[205] 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[206] and even to negotiate the

[196] Bassett & Kay, p 52
[197] Bassett & Kay, p 58
[198] Bassett & Kay, p 60
[199] Bassett &Kay, p 61
[200] Bassett & Kay, p 62
[201] Bassett & Kay, p 62
[202] Bassett & Kay, p 65
[203] Bassett & Kay, p 66
[204] Bassett & Kay, p 67
[205] Bassett & Kay, p 67
[206] Bassett & Kay, p 68

amount of compensation.[207]

n) 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.[208] The area of land totalled approx. 8 acres.[209] Records relating to the negotiation and distribution of compensation for this were not able to be found.[210]

o) 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.[211]

Ōpape Coast Road

p) 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. [212] Significant portions are currently held as road reserves vested in the Opotiki District Council 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.[213]

q) Today the former coach road over the headland is vested in the Opotiki District Council 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.[214]

VIII. CROWN ADMINISTERED DISTRICT LAND BOARD

[207] Bassett & Kay, p 70
[208] Bassett & Kay, p 71
[209] Bassett & Kay, p 72
[210] Bassett & Kay, p 73
[211] Bassett & Kay, p 69
[212] Bassett & Kay, p 73
[213] Bassett & Kay, p 74
[214] Bassett & Kay, p 76

55. The Crown operated District Maori Land Boards and through such Boards, failed to adequately consult or obtain proper consent from the individuals or chiefs of Te Whakatōhea before alienating large amounts of lands.

56. The Crown through District Māori Land Boards failed to adequately check when 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.[215]

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.[216]

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). [217] 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.[218]

e) The original Māori land Boards of the 1900 therefore became "Pākehā

[215] Stirling, p 136
[216] Stirling, p 136
[217] Stirling, p 136
[218] Stirling, p 136

institutions" in which Māori "no longer had any direct involvement".[219]

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.[220]

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 could also call a meeting of owners to consider an offer of alienation.[221]

h) Every alienation of land required confirmation by the district Māori Land Board. However, in practice, this provided little restriction:[222]

   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[223];

   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.[224]

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

[219] Stirling, p 136, quoting the late Alan Ward.
[220] Stirling, p 135
[221] Stirling, p 137
[222] Stirling, p 138
[223] Stirling, p 142
[224] Stirling, p 139

were adequately informed about the meetings.[225]

k) The only recourse for owners opposed to alienation was to lodge a "memorial of dissent" at the meting or formally submit one within a very short timeframe.[226] 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.[227]

l) Once the Board confirmed the resolution at a meeting of owners it became the agent for the owners in completing the alienation.[228]

IX. LAND DEVELOPMENT SCHEMES

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

58. The Crown failed to properly advise Te Whakatōhea of the fullimplications of the inclusion of their lands in the Development Schemes.

59. The Crown failed to properly provide all of the benefits that were promised to Te Whakatōhea as a result of the Development Schemes.

60. The Crown took over ultimate management of the Te Whakatōhea land in the Development Schemes to the exclusion of the land management rights of the Te Whakatōhea landowners.

[225] Stirling, p 139
[226] Stirling, p 139
[227] Stirling, p 139
[228] Stirling, p 139

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.[229] Māori in the district received no finance from this office, while thousands of Pākehā were assisted to the tune of millions of pounds.[230]

b) Māori did not have access to a similar form of finance until the development schemes were financed in the 1930s.[231] putting them almost two generations behind their Pākehā neighbours in the establishment of farms.[232]

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[233] – 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.[234]

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. [235]

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

[229] Stirling, p 272
[230] Stirling, p 273
[231] Stirling, p 272
[232] Stirling, p 273
[233] Stirling, p 287
[234] Stirling, p 340
[235] Stirling, p 314

of tenure or income. [236]

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.[237]

g) Development schemes (and the accompanying policy of title consolidation) did not deliver what the Crown had promised for Te Whakatōhea. As of 1959, Whakatōhea were 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.[238]

Title Consolidation

h) Land development and title consolidation were two closely related Crown policies.[239]

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.[240] However, 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.[241]

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

[236] Stirling, p 332
[237] Stirling, p 318
[238] Stirling, pp 262-263
[239] Stirling, pp 211-212
[240] Stirling, p 212
[241] Stirling, p 212

consolidate its own interests. [242] 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.[243] Stirling says that the remission of survey charges to the Crown soon emerged as a key factor in consolidation schemes.[244]

X. MAORI TRUSTEE

61. The Crown, through the establishment and operation of the Office of the Maori Trustee, failed to adequately protect the retention of Te Whakatōhea lands by empowering the Maori Trustee to facilitate the subdivision and sale of Te Whakatōhea lands.

62. The Crown failed to adequately monitor the activities of the Maori Trustee and correct or provide relief in situations where the Maori Trustee caused prejudice to Te Whakatōhea .

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.[245]

b) Under the Māori Affairs Act 1953, the Māori Trustee could purchase individual interests from those prepared to sell which purchasing funded from the conversion fund – a fund acquired through the sale of Māori interests.[246] Unlike other alienations this did not require the confirmation of the Māori Land

[242] Stirling, p 211
[243] Stirling, p 211
[244] Stirling, p 214
[245] Stirling, p 355
[246] Stirling, p 357

Court.[247]

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.[248]

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.[249]

f) The policy was presented as a way for owners to consolidate their disparate interests in an individual owner.[250]

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.[251] At least two titles were alienated completely as a result of conversion.[252]

i) There are a number of examples of the Māori Trustee acquiring fractionalized

[247] Stirling 357
[248] Stirling, p 357
[249] Stirling, p 368
[250] Stirling, p 357
[251] Stirling, p 362, pp 364-365
[252] Stirling, p 379

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."[253]

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. [254]

XI. SOCIO-ECONOMIC DISADVANTAGE

63. The Crown adopted and effected various policies, actions, and practices relating to, or affecting, Te Whakatōhea, including the descendants of Te Rangihaerepō and their customary lands which had negative impacts upon their economic and social circumstances.

64. The Crown failed to provide proper and adequate education, health services, roading, housing, employment and other entitlements to Te Whakatōhea and the descendants of Te Rangihaerepō, to the detriment of their socio-economic position. The Crown's failure to deliver such entitlements has forced the uri of Te Rangihaerepō to move away from their ancestral lands and those who remain in the traditional rohe continue to have inadequate public services available to them comparative to those who are situated in larger townships.

Particulars

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.[255]

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

[253] Stirling, p 369
[254] Stirling, pp 373-379
[255] Luiten part 1 p 281.

profit.[256]

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. [257]

d) Illness was prevalent in the area, linked to the lack of food from the poor quality land.[258]

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 Opape 3A. Thirty years later they were forced to pay again in order to secure their title at Waiaua.[259] Similar experiences detailed for Ngai Tama, Ngāti Rua.[260]

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.[261]

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.[262]

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.[263]

i) Māori children were treated badly at school, recounts of teachers "flogging" the natives too severely and using rough language towards them. [264]

[256] Luiten part 1 p 280.
[257] Luiten part 1 p 282
[258] Luiten part 1 p 285
[259] Luiten part 1 p 299.
[260] Luiten part 1 p 300.
[261] Luiten part 1 p 292.
[262] Luiten part 1 p 295.
[263] Luiten part 1 p 297.
[264] Luiten part 1 p 298.

XII. FAILURE TO PROTECT NGA TAONGA TUKU IHO O NGĀ URI O TE RANGIHAEREPŌ

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

66. The Crown pursued assimilationist policies in education resulting inthe near extinction of Te Reo Māori and tikanga among Te Whakatōhea.

67. The Crown prohibited the use of Te Reo Māori in schools thereby derogating the right of Te Whakatōhea to maintain and develop their language, culture and customs. Te Whakatōhea individuals werepunished for speaking Te Reo Maori and therefore denied a basic human right fundamental to their identity.

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

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

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

XIII. RATING ISSUES

71. The Crown empowered local authorities to levy rates on Te Whakatōhea land causing an unfair burden upon Te Whakatōhea.

72. The Crown empowered the Maori Land Court to place charging orders on Te Whakatōhea lands to enforce the non-payments of rates.

Particulars

Levying Rates

a) Māori faced difficulties paying rates due to limited ability to develop land and difficulties with tenure.[265]

b) The rating of Māori land was first introduced in 1871 by the Highway Board for the provision of roads,[266] despite non-provision of roads and inadequacy or safety issues with the roads provided.[267]

c) Despite Crown knowledge that Māori had difficulty paying rates, in 1883, Māori land was valued at up to 3 times its value.[268]

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.[269]

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.[270]

[265] Wai 1750, #A26, Woodley, Suzanne, *Local Government and Māori Land Issues Report, 1871 – 2021*, CFRT, 30 September 2022, p 25
[266] Woodley, p 575
[267] Woodley, p 521
[268] Woodley, p 26
[269] Woodley, p 406
[270] Woodley, p 404

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 being alienated to recover the debt,[271] or a charging order was made which incurred a 1-% non-payment levy.[272]

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.[273]

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.[274]

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.[275]

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.[276]

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.[277]

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

[271] Woodley, p 28
[272] Woodley, p 405
[273] Woodley, p 27
[274] Woodley, p 27
[275] Woodley, p 35-37
[276] Woodley, p 35
[277] Woodley, p 38

was undertaken.[278]

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 as the Native Land Court which could assess the title and whether it had the capacity to sustain rates payments.[279]

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.[280]

XIV. LOCAL GOVERNMENT

73. The Crown failed to ensure that local authorities established a relationship with Te Whakatōhea that was consistent with the Treaty and its principles.

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

75. 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 Te Whakatōhea's rohe.

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

Particulars

[278] Woodley, p 48
[279] Woodley, p 517
[280] Woodley, p 520

a) In 1871, the Roading Board was established as the first local government authority.[281] The establishment of local authorities was driven by Pākehā settlers with little support from Māori.[282]

b) The establishment of the first local authorities in the district had little Māori involvement and the legislation establishing these bodies didn't require Māori participation.[283] Nor was there any requirement for hapū or iwi representation.[284]

c) In 1899 a lack of title prevented Māori from voting (this included an inability to vote in local elections[285]) and the government showed a lack of desire to change this system.[286]

    a) 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.[287]

    b) Māori living on the reserves at Ōpape and Hiwarau were 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.[288]

    c) 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. [289]

    d) Despite Māori comprising 12% of the town, in the early 1900s, no Māori were elected to the Borough Council until 1956.[290]

[281] Woodley, p 63
[282] Woodley, p 570
[283] Woodley, p 570
[284] Woodley, p 572
[285] Woodley, p 569
[286] Woodley, p 572
[287] Woodley, p 571
[288] Luiten part 1 p 293
[289] Woodley, p 572
[290] Woodley, p 571

e) 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.[291]

f) The number of Māori Councillors has always been disproportionate to the Māori population in the district.[292]

Inadequate Provision of Services

g) Services provided by Local Government to Māori communities is limited. Gravel roads are prevalent and there are no council provided water or sewerage systems.[293]

h) 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.[294]

XV. RESOURCE MANAGEMENT AND ENVIRONMENTAL ISSUES

77. 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 Te Whakatōhea.

78. 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 Te Whakatōhea.

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

80. The Crown further failed to protect the physical and spiritual health of these seas,

[291] Woodley, p 573
[292] Woodley, p 571
[293] Woodley, p 521
[294] Woodley, p 521

harbours, lakes, rivers, waters and waterways of Te Whakatōhea.

81. The Crown has failed to recognize, protect, and provide for the customary rights, interests and associations of Te Whakatōhea in their seas, harbours, lakes, rivers, and waters by enacting various legislation including the Resource Management Act 1991.

82. The Crown has also failed to recognise, protect, and provide for the customary rights, interests, and associations of Te Whakatōhea 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.

83. The Crown has failed to properly recognise, protect, and provide for the ownership of Te Whakatōhea in water.

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

85. The Crown has failed to protect the interests of Te Whakatōhea 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'.

86. The Crown has failed to adequately recognise and protect the wahi tapu of Te Whakatōhea in and around the harbours, rivers, lakes, waterways, and other Te Whakatōhea taonga.

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

88. The Crown has, through its various Native Lands Acts, caused and permitted the fragmentation and individualisation of communal tribal titles to the lands of Te Whakatōhea.

89. 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 Te Whakatōhea without their consent and, in so doing, has failed to adequately provide for or recognise their role as kaitiaki over these taonga.

90. The Crown has failed to adequately recognise, respect, or provide for the right of Te Whakatōhea to development relating to their taonga.

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

92. The Crown usurped Te Whakatōhea 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.

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

Particulars

Resource management and environmental issues generally

a) No record of consultation with Māori over the development of gas pipelines, despite the route going through archaeological sites important to Māori.[295]

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.[296]

[295] Wai 1750, #A24, Alexander, David, *Scoping Report on Environmental Claims Issues, c.1840 – 2010,* CFRT, March 2022, p 49
[296] Alexander p 52

i. "Conservation" land was always managed by government agencies, no record of input from Māori. Māori couldn't exercise their role of kaitiakitanga.[297]

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.[298]

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 "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."[299]

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.[300]

f) Waterways in the district have been modified by European developments.[301] Some waterways have dried out completely due to farming.[302]

g) Ad medium filum aquae.[303]

[297] Alexander pp 51-55
[298] Alexander pp 56
[299] Alexander pp 61
[300] Alexander p 72.
[301] Alexander p 77.
[302] Alexander p 78
[303] Alexander p 78

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.[304]

i) No consultation with iwi and hapū in developing flood protections of the river.[305]

j) Various government plans have recognised the role Māori have as kaitiaki,[306] 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[307]

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.[308]

    ii. Tuna (eels) have been hunted commercially since the 1960's[309]

    iii. Weka – numbers decreasing[310]

    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.[311]

    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

[304] Alexander p 80
[305] Alexander pp 83, 84 and 87
[306] Alexander p 91
[307] Alexander p 95
[308] Alexander p 100
[309] Alexander p 101
[310] Alexander p 101
[311] Alexander p 102

legislation, the Crown has largely been unable to provide the protection or conservation that was needed.[312]

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.[313]

ii. Have caused significant damage to the native forests.[314]

iii. Iwi and hapū were never consulted about whether they wanted them here or what to do once they were here.[315]

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

v. Pigs, possums, red deer, goats, trout were among some. [316]

vi. Even land was reserved for "acclimatisation" purposes[317]

vii. The Crown was directly involved and an active liberator of introducing these species into NZ without any consultation with Māori.[318]

n) The Crown assumed control of all the waterways and harbours.[319]

o) RMA avoidance of individual iwi and hapū perspectives is not consistent with Te Tiriti.[320]

[312] Alexander p 102.
[313] Alexander p 104.
[314] Alexander p 110.
[315] Alexander p 104.
[316] Alexander p 104-116
[317] Alexander p 114
[318] Alexander p 115.
[319] Alexander p 123
[320] Alexander p 133

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.[321]

q) Consultation with iwi and hapū is based around pākehā ideas of consultation and is at odds with Māori view.[322]'

r) Flooding has severely increased in Waioweka and Ōtara due to forest clearance.[323]

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.[324]

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 is 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.[325]

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.[326]

Ohiwa Harbour

v) The Ohiwa Harbour was pristine, prior to 1840.[327]

[321] Alexander p 135.
[322] Alexander p 138
[323] Alexander p 143
[324] Alexander p 143.
[325] Alexander p 147.
[326] Alexander p 147.
[327] Dr Vaughan Wood, Dr Aroha Spinks, Dr Matthew Cunningham, Dr Tanja Rother, Moira Poutama, *Draft Environmental Issues Report*, CFRT, December 2023, p 273

w) Māori gained health and wellbeing on physical and spiritual levels feeding and gathering from the abundant nourishing populations of seafood within the harbour. Māori gathered pipi, cockles, mussels, oysters, fish, shark, and sting rays during summer and stored some as winter foods. [328]

x) The Northern Steam Ship Company built its own wharf at Ōhiwa in 1896. The natural native environment of forest and shrubs was cleared for maize and farming. Sea level rise and flooding is a particular concern to those living along the edges of the Ohiwa Harbour and around Kutarere.[329] With the closure of the Ōhiwa Wharf the Opotiki and Whakatane Councils stepped in and built a new wharf at Kutarere out of danger of erosion. This wharf was officially opened in 1922.[330]

y) Local rangatira raised concerns over proposals to reclaim land at the harbour in 1909.[331]

z) In 1944, Ōhiwa and Kutarere residents sent petitions to Parliament for legislation to protect Māori fishing rights in the harbour and proposed a reservation for cockles. Dozens of the signatories on the first petition were Te Upokorehe and key whānau of Ngāti Ira, Ngāti Patu, Ngāi Tamahaua, and Ngāi Turanga of Tūhoe. In response to the petition the Chief Inspector of Fisheries Hefford visited Ōhiwa briefly speaking only to a few Pākehā residents on the eastern shore he did not pay a visit to the Māori residents in Kutarere due to 'owing to lack of time and limitations of transport.[332]

aa) In the 1960s, the Ōhope sewage disposal system proposes discharging human effluent into the Ōhiwa Harbour waters causing major concerns to local hapū, iwi, and other residents.[333]

bb) An extract from a report prepared in 1963 on the commercial and recreational use of Ōhiwa Harbour notably had no reference to cultural use.[334] When

[328] Spinks et al., draft report, p 289
[329] Spinks et al., draft report, p 291
[330] Spinks et al., draft report, 293
[331] Spinks et al., draft report, pp 312-313
[332] Spinks et al., draft report, p 314
[333] Spinks et al., draft report, p 296
[334] Spinks et al., draft report, p 297

considering the use of the harbour for effluent disposal, focus was on the harbour as a tourist attraction rather than Māori customary interests or kaitiakitanga.[335]

cc) Local government and the Crown saw pollution of the Ohiwa harbour as "inevitable":

i. When Māori opposed the effluent disposal into the harbour, the Public Health Officer stated that the water would be purer and shellfish bigger (implying this was because of their new human waste diet).[336]

ii. In 1965, the Whakatane County chairperson stated some degree of pollution was essential as his Council hoped for extended use of the port at Ōhope.[337]

iii. Despite concerns raised by the District Health Office in 1969, it was deemed "foolish" that the harbour would remain uncontaminated. Along with this was the compounding issue of effluent pollution from dairy farms. This was also deemed "inevitable" and there was widespread knowledge of this occurrence throughout crown entities.[338]

dd) A 1966 report on shellfish in the harbour reported high stocks of mussels, oysters and cockles. However, the report also noted that depletion in shellfish numbers was due to over-exploitation and siltation caused by burning of native bush and farming efforts in late 1800s to early 1900s.[339]

ee) In the 1970s-80s, excessive mangrove growth was promoted by increased sedimentation.[340]

ff) There has been a significant reduction in the range of fish, shellfish and bird species has been identified, some of which have been replaced by other less desirable exotic species.[341]

[335] Spinks et al., draft report, p 298
[336] Spinks et al., draft report, p 301
[337] Spinks et al., draft report, p 302
[338] Spinks et al., draft report, p 306
[339] Spinks et al., draft report, p 329
[340] Spinks et al., draft report, p 330
[341] Spinks et al., draft report, p 334

gg) Ōhiwa Harbour featured as having the lowest estimated cockle populations in 2016 and 2021 and the lowest estimated pipi population in 2021 out of the seven harbours investigated in the northern North Island region.[342] Additional pressures on mussel numbers include sedimentation and other changing environmental conditions.[343]

hh) Safe bathing limits were exceeded in 2004, 2011 and 2017. Some of the poor water quality events were noted by local newspapers.[344]

[342] Spinks et al., draft report, p 336
[343] Spinks et al., draft report, p 338
[344] Spinks et al., draft report, p 339

D. TE MAMAE- THE PREJUDICE

94. As descendants of Rangihaerepō, the claimants have been prejudicially affected by the policies, practices, ordinances, regulations, proclamations, notice, orders, actions or omissions of the Crown, in relation to Acts of Parliament and other legislative instruments. This includes the New Zealand Settlements Act 1863 and other statutory instruments with respect to the invasion and confiscation of lands, and destruction of taonga o te rangatira Rangihaerepō.

95. All policies, practices, ordinances, regulations and proclamations, notices, orders, actions or omissions of the Crown in relation to Acts of Parliament and other statutory instruments in relation to this claim and referred to herein are and remain inconsistent with the words and principles of Te Tiriti o Waitangi.

96. As a consequence of the Crown's breaches as set out in this Statement of Claim, the descendants of Te Rangihaerepō have suffered and continue to suffer various prejudicial effects including:

    a. The rapid alienation of almost all of their land base leaving Te Whakatōhea and the descendant of Te Rangihaerepō virtually landless within their rohe;

    b. The loss of mana and rangātiratanga 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. Loss of property; marginalisation within their own ancestral lands;

    e. The loss of life; loss of oranga, health, and wellbeing;

    f. The disintegration and decay of 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, mauri, and mana of all taonga, whānau, and ngā wāhine o Te Whakatōhea.

E. TE UTU - THE RELIEF SOUGHT

97. That the prejudice as aforesaid was and remains such that the descendants of Te Rangihaerepō are entitled to immediate and substantial reparations such as to restore their mana and economic base.

98. 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 Te Whakatōhea over their customary tribal lands and the recognition of Te Whakatōhea customary associations and interests with their lands;

    b. The return to Te Whakatōhea 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 Te Whakatōhea 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 Te Whakatōhea of all lands held by institutions under the Education Act 1989 within their customarytribal 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 Te Whakatōhea of all lands vested under the New Zealand Railway Incorporation Restructuring Act 1989

f. Within their customary tribal territory, or any interest in suchland together with any improvements thereon;

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

h. The immediate recognition of Te Whakatōhea ownership of all rivers, lakes, waterways, minerals, waters and ground-waters, and other resources currently claimed by the Crown within the Te Whakatōhea rohe;

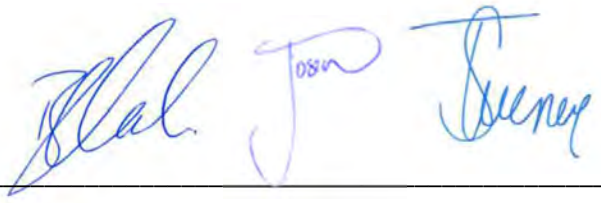
i. An immediate apology by, and on behalf of, the Crown and its agents;

j. Full and comprehensive monetary reparation;

k. Costs; and,

l. Such other relief as the Tribunal deems appropriate.

DATED at Tāmaki Makaurau, 23 January 2024



Coral Panoho-Navaja / Raewyn Clark / Josi Witehira / Solita Turner

Counsel for the Claimants

Appendix A – Footnote references

1. Wai 1750, #A03, McLellan, John, *Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874*, Waitangi Tribunal, July 2020
2. 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
3. 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
4. Wai 1750, #A24, Alexander, David, *Scoping Report on Environmental Claims Issues*, c.1840 – 2010, CFRT, March 2022
5. 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
6. Wai 1750, #A26, Woodley, Suzanne, *Local Government and Māori Land Issues Report, 1871 – 2021*, CFRT, 30 September 2022
7. Wai 1750, #A29, Basset, Heatther and Kay, Richard, *Public Works Issues c. 1870s – 2010*, CFRT, June 2023
8. Wai 1750, #A30, Walzl, Tony, *War and Raupatu 1840 – 1871 Report*, Waitangi Tribunal, 15 March 2023
9. Wai 1750, #A32, Stirling, Bruce, Twentieth Century Land Legislation and its Impacts, North Eastern Bay of Plenty Inquiry, CFRT, November 2023
10. Kahotea, Dr. Desmond Tatana, *Whakatōhea and the Common Marine and Coastal Area 1840-1865,* 1 October 2019, at p 0956 – filed as part of Wai 1750, #A019, CIV-2011-485-817 Whakatōhea (Edwards) priority application and the Common Marine and Coastal Area Act 2011 1840 – 2019, 13 October 2021
11. Wood, Dr. Vaughan, Dr Aroha Spinks, Dr Matthew Cunningham, Dr Tanja Rother, Moira Poutama, *DRAFT Environmental Issues Report*, CFRT, December 2023, at page