

IN THE WAITANGI TRIBUNAL

WAI 1750
WAI 2066

UNDER

The Treaty of Waitangi
Act 1975

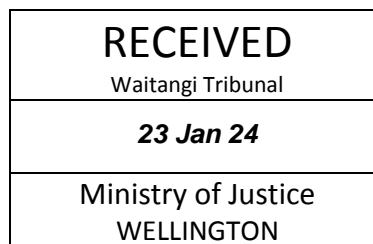
AND IN THE MATTER OF

The North-Eastern Bay
of Plenty Inquiry

AND IN THE MATTER OF

A claim by Wai 2066:
Takaparae Papuni

**FIRST AMENDED STATEMENT OF CLAIM
DATED 23 JANUARY 2024**



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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. This amended statement of claim is filed on behalf of Takaparae Papuni, who is the named claimant for Wai 2066 (“the claimant”), which is a claim filed on behalf of Ngāti Ruatakenga (“Ngāti Rua”) concerning the Crown’s breaches of Te Tiriti of Waitangi 1840 (“Te Tiriti”).

THE CLAIM

2. This claim focuses on the Crown’s invasion (“the invasion”) of Te Whakatōhea (“Whakatōhea”), the subsequent occupation and abrogation of their whenua, kāinga and taonga, and the subsequent confiscation/raupatu (“the raupatu”) of the same which begun in the 19th century, with specific focus on the hapū of Ngāti Rua.
3. This claim pleads that the Crown through its legislation, practices and policies, acts and omissions, coupled with its representatives and agents, actively caused and facilitated the invasion and the raupatu. In doing so, the Crown, in breach of Te Tiriti, prejudiced Ngāti Rua and Whakatōhea, including their:
 - a) whakapapa;
 - b) whenua;
 - c) mana;
 - d) wairua;
 - e) kāinga;
 - f) taonga;
 - g) mana whenua;
 - h) mana moana;
 - i) rangatiratanga;
 - j) kaitiakitanga;
 - k) mahinga kai and kaapata kai

- l) resource base;
 - m) tikanga;
 - n) mātauranga;
 - o) wāhi tapu; and
 - p) economic wellbeing and asset base.
4. This claim also addresses the:
- a) enduring intergenerational impacts of the invasion and the raupatu on Ngāti Rua and Whakatōhea; and
 - b) decline of te reo for Ngāti Rua and Whakatōhea as a result of Crown actions, legislation, policy and practice.

THE CLAIMANT AND TE TIRITI

5. The claimant is Ngāti Rua and Whakatōhea who as an iwi, have been prejudicially affected by the Crown and its conduct including that of its agents and are therefore eligible to bring this claim.¹
6. In Ōpōtiki, between 27-28 May 1840, seven Te Whakatōhea rangatira signed Te Tiriti, including Āporotanga and Rangimatanuku who signed on behalf of Ngāti Rua.²
7. Article One of Te Tiriti granted the Crown a right of “kāwanatanga” or governance. The granting of kāwanatanga to the Crown did not undermine, diminish or alter the mana held by Ngāti Rua or Te Whakatōhea.
8. Article Two of Te Tiriti guaranteed that Māori would retain “tino rangatiratanga” over their kāinga, whenua and taonga, with counsel

¹ Treaty of Waitangi Act 1975, s 6.

² Bryan Gilling *Te Raupatu O Te Whakatōhea: The Confiscation of Whakatōhea Land 1865-1866* (Wai 1750, #A4, 1994) at 8.

interpreting “taonga” as meaning all those things important to Māori – both tangible and intangible. For Māori, the Queen’s promise of tino rangatiratanga meant that neither she nor her representatives could take away chiefly control without Māori assent³ – which they never gave.

9. Whakatōhea rangatira, amongst them Aporotanga and Rangimatanuku, signed Te Tiriti on behalf of their people in good faith, intending and expecting that it be honoured. They did so against a backdrop of initial early trading contact with Pākehā, which would continue to develop and strengthen the Whakatōhea economy throughout the 1840s and 1850s. However, within three decades, the Crown would dishonour Te Tiriti by invading, occupying, killing and maiming Whakatōhea, and subsequently stripping Whakatōhea of their mana, whenua, kāinga and taonga. This includes their economic base and potential, which continues to economically prejudice them to the present day. Accordingly, Te Tiriti continues to be breached.

NGĀTI RUA ORIGINS

10. Ngāti Rua whakapapa to both the Nukutere and the Mātaatua waka.
11. Tautūrangi, a significant Te Whakatōhea ancestor, arrived on the Nukutere waka from Hawaiki. He landed at Te Rangi, a rocky cove on the eastern side of Awaawakino Bay. Tautūrangi and his people became known as Te Wakanui.
12. The Mātaatua canoe arrived eight generations later, also from Hawaiki, bearing the female ancestor Muriwai.
13. Tūtāmure, a descendant of Tautūrangi, married Hine-i-kauia, the daughter of Muriwai, forming a union of both waka.
14. Tūtāmure is one of the most illustrious ancestors and is the name of the Ngāti Rua ancestral whareniui at Ōmarumutu Marae.⁴

⁴Wai 1750, #C1 at 5-6.

15. Muriwai also had a son named Rēpanga who travelled to Ōpōtiki, where he married Ranginui-ā-te-Kohu's daughter, Ngāpoupereta. Ruatakenga, a descendant of Rēpanga, was the name adopted by the Ngāti Ruatakenga hapū.
16. The whakapapa from Ranginui-ā-te-Kohu to Ruatakenga is shown here:

Ranginui-ā-te-Kohu
Ngāpouperetā = Rēpanga
Ruamatarangi
Ruamatanui
Ruamataiti
Ruataurau
Ruapūtaka
Ruakaweka
Ruatakenga⁵
17. The Ngāti Rua rohe begins at the coast and heads inland from Tarakeha to Paaiki. The details of the boundary were further detailed by Mr. Te Riaki Amoamo during a Judicial Conference held in Ōhope on 29 August 2019,⁶ and Mr. Amoamo's counsel filed their corrections to the transcript to properly reflect what was said by the kaumatua when describing the boundaries of Ngāti Rua whenua.⁷

TE TIRITI AND ITS PRINCIPLES

18. Under the principle of active protection, the Crown has a duty to actively protect Māori and their interests.⁸
19. Under the principle of reciprocity, the Crown is obligated to ensure Māori retain their tino rangatiratanga, or full, exclusive and undisturbed

⁵ Wai 1750, #C1 at 4-6.

⁶ Wai 1750, #4.1.1.

⁷ Wai 1750, #3.1.071 and #3.1.071(a).

⁸ Waitangi Tribunal *Te Rauapatu O Tauranga Moana Report on the Post Rauapatu Claims Volume 1* (Wai 215, 2010) at 21-22.

possession and control over their whenua, kāinga and taonga, in exchange for being granted the authority of kāwanatanga.⁹

20. Importantly though, Crown kāwanatanga cannot be used to override tino rangatiratanga. Nor can kāwanatanga be used to alter the nature of Māori customary tenure including the confiscation or compulsory taking of Māori whenua, kāinga and taonga.¹⁰
21. The principle of reciprocity has been described as an overarching principle that guides the interpretation and application of the other Treaty principles.¹¹ The obligation to ensure that Māori retain tino rangatiratanga over their whenua, taonga and kāinga created a number of other obligations in relation to Treaty principles, including:
 - a) A duty to actively protect Māori, Māori whenua, and Māori use and exercise of tino rangatiratanga over their whenua, kāinga and taonga;
 - b) A duty to act in partnership and good faith towards Māori with respect to all matters that concern their whenua, kāinga and taonga.
22. The duties apply similarly to any Crown derived or empowered entity or agents acting in its place.

FIRST CAUSE OF ACTION: THE INVASION

BREACH

23. The invasion breached Te Tiriti.
24. The invasion was a direct breach of the duty of active protection.

⁹ Waitangi Tribunal *Te Rauapatu O Tauranga Moana Report on the Post Rauapatu Claims Volume 1* at 19.

¹⁰ Waitangi Tribunal *Te Rauapatu O Tauranga Moana Report on the Post Rauapatu Claims Volume 1* at 18.

¹¹ Waitangi Tribunal *Te Rauapatu O Tauranga Moana Report on the Post Rauapatu Claims Volume 1* at 19.

PARTICULARS

25. The invasion, commencing in September 1865, was ostensibly driven by the purported pursuit of justice for the deaths of Carl Sylvius Völkner ("Völkner") and James Te Mautaranui Fulloon ("Fulloon").
26. Völkner, the designated CMS missionary at Ōpōtiki,¹² and Fulloon, who had served under Governor Grey¹³ and was tasked with finding Völkner's killers, were killed by Pai Mārire members in 1865.
27. The Pai Mārire movement began gaining traction in the North-Eastern Bay of Plenty in early 1865 with the arrival of emissaries Kereopa Te Rau and Patara Raukatauri. Their presence sparked a chain of events which would ultimately lead to the killing of both men.
28. The Crown became concerned that the killings and the ongoing and unchecked disruption caused by Pai Mārire adherents could spread dissent among otherwise loyal groups of Māori. This fear further underscored the need for a concerted and strategic response to the escalating crisis.
29. On 2 September 1865, Governor Grey issued a Proclamation of Peace in response to the death of Völkner and Fulloon.¹⁴
30. The Proclamation marked the conclusion of hostilities in Waikato and Taranaki and granted amnesty to individuals who had participated in "rebellion" against the Crown. It gave assurances that no additional lands would be confiscated as a punitive measure for past actions.¹⁵
31. However, that amnesty did not extend to those implicated in the deaths of Völkner and Fulloon. The proclamation announced Grey's intention to

¹² Tony Walzl *War and Raupatu 1840-1871 Report* (Wai 1750, #A30, 2023) at 339.

¹³ John McLellan *Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874* (Wai 1750, #A3, 2020) at 34-35.

¹⁴ At 38.

¹⁵ At 38.

dispatch troops to Ōpōtiki to apprehend those responsible for their murders:¹⁶

If they [who murdered Völkner and Fulloon] are given up to justice, the Governor will be satisfied; if not, the Governor will seize a part of the lands of the Tribes who conceal these murderers and will use them for the purpose of maintaining peace in that part of the country, and of providing for the widows and relatives of the murdered people.¹⁷

32. A second proclamation, issued 4 September 1865, instructed that martial law would be in force in the districts of Ōpōtiki and Whakātane. The declaration of martial law granted the Commander of the Military Forces summary authority. This permitted those suspected of killing Völkner, as well as of those suspected of aiding and abetting, to be tried by courts-martial.¹⁸
33. The Crown initially intended to only punish those involved in the murders of Völkner and Fulloon.¹⁹ However, the Crown changed its position and instead depicted all Whakatōhea hapū as hostile Pai Mārire followers. The military strategy that the Crown unleashed at Ōpōtiki was direct military invasion without notification or negotiation.
34. On 8 September 1865, the first contingent of the colonial force of 516 men arrived off the coast of Ōpōtiki, just three days after both proclamations were published in the 5 September 1865 *Gazette*.
35. On 11 September 1865, Crown forces seized Pākōwhai after a 25-minute exchange of gunfire, forcing about 90 Whakatōhea Māori and Pai Mārire adherents to retreat to the bush.²⁰
36. Pākōwhai was captured with little resistance, which suggests that Whakatōhea did not intend to put up a fight and raises doubts about their

¹⁶ At 39.

¹⁷ New Zealand Gazette, 5 Sept 1865, no 35, p 267.

¹⁸ McLellan, above n 13, at 62.

¹⁹ Walzl, above n 12, at 1092.

²⁰ Gilling, above n 2, at 72.

purported hostility.²¹ Much of Whakatōhea had already evacuated Pākōwhai due to the bombardment of cannon fire and the anticipation of an invasion.

37. Whakatōhea was forced to retreat inland at Whitikau, Toatoa and the upper Waioeka Valley.²²
38. On 5 October 1865, occupants of Te Tarata Pā attempted to escape after being attacked, suffering substantial losses. Those who managed to escape withdrew to Kohipaua Pā in Waioeka Gorge.²³
39. With defeats at Te Tarata and Te Puia, Whakatōhea suffered heavy casualties, leading to large groups surrendering to colonial forces.²⁴
40. Over time, more and more Whakatōhea and other Pai Mārire surrendered. As this happened, more also chose to assist the colonial forces in their pursuit of Kereopa by providing supplies and acting as guides.
41. By November 1866 most fighting was over and the majority of Whakatōhea had surrendered and taken the oath of allegiance.²⁵
42. By this point, 58 people were known to have been killed from Whakatōhea, with an unknown number of wounded. This represented a significant proportion of an iwi with a population of approximately 500.²⁶
43. Colonial forces were almost entirely reduced following the surrender of the majority of Whakatōhea, with volunteer rangers, constabulary and Native Contingents taking their place on a small number of offensives.²⁷

SECOND CAUSE OF ACTION: DESTRUCTION OF NGĀTI RUA AND WHAKATŌHEA

²¹ At 72.

²² McLellan, above n 13, at 44.

²³ Walzl, above n 12, at 738-740.

²⁴ At 47-49.

²⁵ At 64.

²⁶ At 47.

²⁷ At 53.

BREACH

44. The Crown not only failed to uphold and protect Ngāti Rua and Whakatōhea tino rangatiratanga over their whenua, kāinga and taonga, but actively engaged in theft, confiscation and destruction of the same.

PARTICULARS

45. Prior to the invasion, Whakatōhea experienced prosperity, boasting extensive plantations of maize, potatoes, wheat, kūmara, and taro. Abundant livestock, including fowls, cattle, pigs and horses further contributed to the region's wealth.²⁸
46. During the mid-19th century, Ngāti Rua expanded into Ōpōtiki because Pākehā settlers were building larger houses and cultivating extensively around their main village at Pākōwhai.²⁹
47. Whakatōhea owned multiple vessels which made regular trips to Auckland carrying cargoes of wheat, potatoes and pigs. The sale of these commodities was an important part of the economy of Whakatōhea, and enabled the purchase of tools, ploughs, carts, clothing, blankets, and other goods.³⁰
48. In the 1840s, Ngāti Rua made plans to purchase their own vessel to access the Auckland market. They established clearings at Taiharuru and Wharotui, cultivating cash crops and rearing pigs for surplus.³¹
49. Ngāti Rua purchased a schooner registered as the *George & Katherine* but endowed the vessel with the name *Hokopoaka* (“purchased with pigs”)

²⁸ Ranginui Walker *Opotiki-Mai-Tawhiti: Capital of Whakatōhea* (Penguin Books, Auckland 2007) at 67.

²⁹ At 60.

³⁰ At 63-65.

³¹ At 63

after the pigs that were raised to pay for it.³² Additionally, Ngāti Rua purchased six canoes from Ngāti Rangitihī of Te Arawa. Canoes were used for loading and unloading cargo as ships struggled to cross the sandbar to enter Ōpōtiki Harbour.³³

50. Strategic initiatives of Ngāti Rua propelled their economic growth and fostered independence. Their ability to adapt, establish trade networks, and navigate the rapidly changing economic landscape exemplified their resilience and resourcefulness.
51. During the invasion, the colonial forces were not adequately provisioned with regard to rations, supplies, or horses. They were expected to supply themselves by looting or confiscating provisions from Whakatōhea.³⁴
52. Accordingly, the colonial forces engaged in widespread pillaging, looting, and plundering of the abundant resources of Whakatōhea. Colonial forces destroyed any resources that Whakatōhea could potentially use to hold out against a surrender.³⁵
53. Crops, livestock, horses, equipment, and precious taonga of Whakatōhea were taken as sustenance for the forces and as commodities for individual profiteers and souvenir hunters — evident in recordings by colonial troops.³⁶ Anything not taken, used or consumed was destroyed.³⁷
54. The colonial forces took and destroyed Whakatōhea pā, including Paerata and Maraerohutu, previously occupied by Mokomoko’s people.³⁸ The surrounding crops and livestock were also confiscated or destroyed.³⁹

³² At 63-64.

³³ At 64.

³⁴ McLellan, above n 13, at 63.

³⁵ Walzl, above n 12, at 1094.

³⁶ At 730.

³⁷ McLellan, above n 13, at 63.

³⁸ At 45.

³⁹ At 63.

55. This systematic exploitation and widespread theft, confiscation and destruction of deeply impacted the prosperity and well-being of Whakatōhea.

THIRD CAUSE OF ACTION: LACK OF NON-VIOLENT ENGAGEMENT

BREACH

56. The Crown breached its duty of partnership and good faith by failing to provide adequate opportunity for non-violent engagement before invading Whakatōhea in 1865.

PARTICULARS

57. There is no indication that the Crown attempted to warn or negotiate terms with Whakatōhea before the invasion.⁴⁰

58. The Crown initially intended to only punish those involved in the murders of Völkner and Fulloon⁴¹ However, the Crown changed its position and instead depicted all Whakatōhea hapū as hostile Pai Mārire followers. The military strategy that the Crown unleashed at Ōpōtiki was direct military invasion without notification or negotiation.

59. The Crown's invasion of Whakatōhea began on 8 September 1865, just three days after the Proclamation and declaration of martial law were published. It is highly unlikely that Whakatōhea knew of the proclamations, including the declaration of martial law, before the invasion.⁴²

60. It was not until 16 September 1865, day 9 of the occupation, that colonial forces entered into negotiations in response to communications initiated by

⁴⁰ Gilling, above n 2, at 69.

⁴¹ Walzl, above n 12, at 1092.

⁴² McLellan, above n 13, at 39-40..

Whakatōhea Māori.⁴³ The terms offered by the colonial forces required unconditional surrender. Those not involved in Völkner’s killing would be pardoned, but their land would nonetheless be confiscated. Anyone proven to have taken an active part in the murder would be “arrested and dealt with”.⁴⁴

61. The Crown had ample opportunities to communicate the surrender of Völkner and Fulloon’s killers to Whakatōhea. It is quite possible that, if informed and aware of the impending destruction they would face, Whakatōhea would have cooperated by handing over the individuals responsible to the Crown.

FORTH CAUSE OF ACTION: THE RAUPATU

BREACH

62. The Crown breached Te Tiriti by unjustly labelling Whakatōhea Māori in “rebellion” under the Settlements Act 1863 which enabled excessive confiscation of Ngāti Rua and Whakatōhea land.

PARTICULARS

63. The New Zealand Settlements Act 1863 (“the Settlements Act”) legislated for the confiscation of land from Māori deemed to be “engaged in open rebellion against Her Majesty’s authority.”⁴⁵ Its ostensible purpose was to place military settlers, who would be capable of forcibly protecting themselves, on confiscated tribal land.⁴⁶ The Settlements Act also allowed the Governor to set aside confiscated land for migrant settlers from Europe.

⁴³ At 734-737.

⁴⁴ Gilling, above n 2, at 74.

⁴⁵ Section 5 The New Zealand Settlements Act 1863.

⁴⁶ Walker, above n 28, at 123.

64. In October 1866, an additional amendment to the New Zealand Settlements Act was passed.⁴⁷ Section 5 granted the Governor the authority to establish reserves from confiscated lands. Notably, under section 6, the Act declared all prior and future proceedings under the New Zealand Settlements Acts and their amendments to be “absolutely valid”. This provision barred any legal challenge to the legitimacy, scale or method of confiscation, irrespective of omissions or defects.
65. The confiscated lands included those of Ngāti Awa and Whakatōhea for the murders of Fulloon at Whakatāne and Völkner at Ōpōtiki. On 1 September 1866 the land confiscated was defined as:

All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south for a distance of twenty miles, thence to the summit of (Mount Edgecombe) Putanaki [sic: Putauaki]; thence by a straight line in an easterly direction to a point eleven miles due south from the entrance to the Ohiwa Harbour; thence by a line running due east for twenty miles; thence by a line to the mouth of the Ararapara River, and thence following the coast line to the point of commencement at Waitahanui.⁴⁸

⁴⁷ New Zealand Settlements Acts Amendment Act 1866.

⁴⁸ New Zealand Gazette, 27 September 1866, no 52, p 364.



An excerpt from an c.1870 sketch map of the north-eastern Bay of Plenty confiscated lands and intended allocation.⁴⁹

66. The 1928 Sim Commission reported the proclaimed confiscation district covered an area of 448,000 acres.⁵⁰ About 118,300 acres were later returned to “loyal” Māori, and an additional 112,300 acres were returned to previously “rebel” Māori who had submitted to the Crown's authority. The net total of confiscated land after these returns was 211,060 acres.⁵¹ Approximately 144,000 of those acres had originally belonged to Te Whakatōhea.⁵²
67. The government's decisions regarding which land to confiscate was unclear and they took significantly more land than needed. In doing so, the Crown acted well beyond the scope of the Settlement Act's stated purpose of providing for settlers' safety and peace.

⁴⁹ AAFV 997 18/ A101 1879, ANZ, Wellington, R22822587.

⁵⁰ McLellan, above n 13, at 81.

⁵¹ *Whakatōhea and Te Tāmbarau o Te Whakatōhea and the Crown: Deed of Settlement of Historical Claims* at 30

⁵² At 81.

68. Neither loyalty to nor so-called rebellion against the Crown influenced this extensive confiscation, resulting in unjust loss of land for Whakatōhea.
69. The confiscation of land also resulted in confiscation of and loss of access to areas of the moana, awa and other waterways. These losses abrogated Whakatōhea and Ngāti Rua from their mana moana.
70. As well as having cultural significance, these bodies of water were important economic assets.
71. The loss of access to these waters deprived Whakatōhea and Ngāti Rua of:
- a) kaimoana and other resources such as flax;
 - b) puna waiora;
 - c) wairua;
 - d) mana moana; and
 - e) mana, including the ability to feed themselves and manuhiri.
72. The Crown initially intended to limit land confiscation to punish those involved in the murders of Völkner and Fulloon.⁵³ However, the situation shifted, and all Whakatōhea hapū were depicted as hostile Pai Mārire followers. This was used to justify broader land confiscation as a punitive measure.⁵⁴
73. Confiscation was initially planned under the Outlying Districts Police Act, which included several protections and would have limited the amount of land that could be taken. However, the Settlements Act bypassed these safeguards.⁵⁵

FIFTH CAUSE OF ACTION: THE ŌPAPE LAND BLOCK

BREACH

⁵³ Walzl, above n 12, at 1097.

⁵⁴ At 1098.

⁵⁵ At 1098 - 1100.

74. The establishment of the Ōpape Native Reserve constituted a breach of Te Tiriti.
75. The Ōpape Native Reserve abrogated from Ngāti Rua their exercise of tino rangatiratanga over their whenua, kāinga and taonga.

PARTICULARS

76. John Alexander Wilson’s appointment as Special Commissioner involved overseeing the surveys making arrangements with Whakatōhea for land to be ceded to the government or returned to iwi.⁵⁶ Wilson began making out of court arrangements well before the first Compensation Court.⁵⁷ Wilson’s largest out of court settlement was the Ōpape Reserve (“the reserve”) in 1866, which was awarded to the “rebels” of the six identified hapū of Whakatōhea.⁵⁸
77. The Ōpape Native Reserve comprised 20,290 acres on the ancestral whenua of Ngāti Rua.⁵⁹ Prior to the invasion, this whenua was held and inhabited solely by Ngāti Rua.⁶⁰
78. Despite no evidence linking Ngāti Rua to Völkner’s murder, Ngāti Rua were labelled as rebels and their whenua was subsequently confiscated as part of the raupatu.
79. The displaced hapū of Ngāti Ira, Ngāti Patu, Ngāti Ngahere, and Nga Tamahua, were forced to leave their ancestral lands at Waiotahe, Paerataa, Hikutaia, Pakowhai, and Waiowekae, and were relocated to the reserve on Ngāti Rua whenua.⁶¹

⁵⁶ McLellan, above n 13, at 88-89.

⁵⁷ Walker, above n 28, at 127.

⁵⁸ McLellan, above n 13, at 87.

⁵⁹ At 87.

⁶⁰ At 87.

⁶¹ Walker, above n 28, at 34.

80. The boundaries of the reserve were:

Bounded on the North by the sea; on the East by a line from Point Titoi to Tarakeham thence to Tawatihitihi, thence by a straight line running through Puketeko to the Southern boundary of the confiscated block, on the West by Waiawa River [sic] from its mouth to the point where it passes between Makeo and Wakahau Hill to the southern boundary of the confiscated block; on the South by the boundary of the confiscated blocked.⁶²

81. The crown did not address the distribution of the reserve among Whakatōhea hapū until 1879. Surveyed in 1880 by W. Tole, the subdivision and allocation of blocks to hapū was finalised in 1883.⁶³

82. The northern half of the reserve taking in the costal platform was cut into elongated blocks, ostensibly to give each hapu access to the coast.

- a) Ōpape Block 1 and 11 was assigned to Ngā Tamahaua;
- b) Ōpape Block 2 and 10 was assigned to Ngāti Ngahere;
- c) Ōpape Block 3 and 12 was assigned to original owners, Ngāti Ruatakena and Ōpape Block 3A was assigned to Ngāti Muriwai;
- d) Ōpape Block 4 and 7 was assigned to to Upokorehe;
- e) Ōpape Block 5 and 9 was assigned to Ngāti Patumoana; and
- f) Ōpape Block 6 and 8 was assigned to Ngāti Ira.⁶⁴

83. The Registrar to the Under Secretary of the Native Department, H. S. King, concluded in 1915 that John Alexander Wilson had made no distinction between the various hapū of Whakatōhea for either confiscation of lands or the award of the Ōpape Reserve.⁶⁵

⁶² At 33.

⁶³ At 135.

⁶⁴ Jane Luiten *Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands* (Wai 1750, #A12, 2021) at 85 - 87.

⁶⁵ McLellan, above n 13, at 62.

84. The inland part of the Ōpape reserve was subdivided amongst the hapū. However, this land was in broken hill country and mountain forests which were unsuitable for farming or cultivation.
85. The displaced hapū were deliberately allocated the Ōpape Land Reserve due to its poorer land quality and its geographical separation from the confiscated land which was granted to Pākehā settlers.
86. In 1908, the Native Land Commission assessed the land quality as “at best ... second-class land.”⁶⁶ Despite this designation, almost the entire iwi was expected to sustain themselves on these poor-quality lands which were situated within an area formerly held by Ngāti Rua.⁶⁷
87. As a result of their forcible displacement, Ngāti Rua bore the burden of accommodating all the other Whakatōhea hapū on their lands. The diminished access to arable land and natural resources escalated tensions among the various hapū. The forced relocation of other hapū onto their ancestral whenua was a significant imposition for Ngāti Rua, who nonetheless felt obligated to share their ancestral lands with their Whakatōhea whanaunga.

SIXTH CAUSE OF ACTION: THE COMPENSATION COURT

BREACH

88. The Compensation Court contributed to the alienation of Whakatōhea Māori Whenua, further eroding traditional social structures, mana and rangatiratanga of Whakatōhea. The Crown’s failure to adequately protect Whakatōhea from the Compensation Court’s process constitutes breaches of Te Tiriti principles of partnership and good faith.

PARTICULARS

⁶⁶ At 97.

⁶⁷ At 141-142.

89. The Settlements Act established the Compensation Court which required claimants to prove their loyalty to the Crown; failure to do so resulted in disqualification from receiving compensation.⁶⁸
90. Section 4 of the Confiscated Lands Act 1867 allowed the Governor to grant lands “to such persons of the Native race as shall be proved to his satisfaction to have been in rebellion and have subsequently submitted to the Queen’s authority”.
91. Māori had difficulties engaging with the Compensation Court because of its European bureaucratic process dependent on access to literacy. The lack of clarity around eligibility resulted in some Māori wrongly believing that they were ineligible to pursue a claim.⁶⁹
92. In most cases the Compensation Court awarded lands confiscated from Whakatōhea to individuals rather than to hapū, which is inconsistent with Māori customary tenure.
93. The Urewera Tribunal determined that the Compensation Court's procedures were severely flawed. The court lacked a proper venue, with sessions held at short notice in locations difficult for many applicants to travel to. The hearings themselves were brief, offering inadequate opportunity to thoroughly investigate claims.⁷⁰
94. The Compensation Court process created division amongst Māori with some claimants providing evidence against the claims of others solely to secure their own claims.⁷¹ There is evidence indicating John Alexander Wilson, who was Special Commissioner, organised witnesses to dispute claims he did not support.⁷²

⁶⁸ Walzl, above n 12, at 807.

⁶⁹ McLellan, above n 13, at 116.

⁷⁰ Waitangi Tribunal, *Te Urewera Report*, 2017, op cit, pp.209-210; see also Waitangi Tribunal, *The Ngāti Ava Raupatu Report*, op cit. pp.80-81.

⁷¹ Waitangi Tribunal, *The Ngāti Ava Raupatu Report* at 82

⁷² At 82.

SEVENTH CAUSE OF ACTION: ONGOING SOCIO-ECONOMIC ISSUES

95. The uri of Ngāti Rua and Whakatōhea are still feeling the effects of the invasion and the raupatu 150 years later.

BREACH

96. The Crown has breached its duty of partnership by failing to adequately address its historical wrongdoings, specifically the enduring impacts of raupatu that result in persistent and ongoing socio-economic issues for Whakatōhea.

HOUSING AND ACCOMMODATION

97. The historical injustices and economic setbacks resulting from raupatu contribute to the difficulties in achieving housing ownership due to the lack of opportunity for significant economic recovery and the loss of land suitable for housing.
98. In 2018 16,095 people affiliated to Whakatōhea with 40% living in the Bay of Plenty Region.⁷³
99. In 2013 30% of Whakatōhea reported owning their own home.⁷⁴ This was lower than the overall rate across New Zealand's overall of 65%.⁷⁵
100. In 2013, 49.2% of Whakatōhea were living in rental accommodation, with 17% living in Housing New Zealand accommodation.⁷⁶

⁷³ Te Whata "Whakatohea: Population" (2018) Te Whata <www.tewhata.io>

⁷⁴ Te Whata "Whakatohea: Home Ownership" (2018) Te Whata <www.tewhata.io>

⁷⁵ Statistics New Zealand "2013 Quick Stats" (2013) <www.stats.govt.nz> at 22.

⁷⁶ Statistics New Zealand "Iwi Individual profile: Whakatohea" (2013) <www.stats.govt.nz> at 22.

101. In the 2018 census the Opotiki District recorded the second highest percentage of Māori living in crowded housing at 27%.⁷⁷
102. Housing ownership has become very difficult for Whakatōhea due to the comparatively low incomes and increasing house prices.⁷⁸
103. The situation is exacerbated by the lack of economic opportunity in the region, as evidenced by a growing number of people receiving a benefit in the Opotiki District. There was a 14% increase from 2013 to 2016, with Māori constituting 80% of the total number of current beneficiaries.⁷⁹
104. Māori paying private rental rates face challenges in saving for a home deposit due to low-income levels and rising living expenses. Research shows that 20.6% of Māori in the Ōpōtiki district cannot secure a loan, and 17.7% cannot save for a deposit.⁸⁰
105. The claimant reports a desire amongst Ngāti Rua to return to their whenua. This aspiration is driven by strong connections to their marae, whenua, rohe, cultural heritage and whakapapa that binds them together. However, practical barriers including the lack of job opportunities and affordable housing make returning difficult.

EMPLOYMENT

106. In the Ōpōtiki District, 61.2% of the Māori population earned under \$30,000, compared to New Zealand's rate of 47.6%.⁸¹

⁷⁷ Statistics New Zealand “2018 Census Place Summaries: Opotiki District” (2018) <www.stats.govt.nz>

⁷⁸ Housing New Zealand “Our Statement of Intent: 2017-2021” – Housing New Zealand fail to make any substantial recognition of the specific housing needs of Māori at p 19.

⁷⁹ Jodi Porter “Accommodation Report Opotiki District” (Te Poutokomanawa o Te Whēki Ltd, Opotiki, 2017) at 10

⁸⁰ Porter at 17.

⁸¹ Statistics New Zealand “2018 Census Place Summaries: Opotiki District” (2018) <www.stats.govt.nz>

107. In 2018, 23.5% of Whakatōhea reported a personal income exceeding \$50,000 per year, compared to 31.6% of all New Zealanders.⁸²
108. In Ōpōtiki District, Māori unemployment stands at 9.9%. This exceeds double the national rate of 4% and is higher than national average for Māori of 8.1%.⁸³
109. In the Ōpōtiki District, 44% of Māori are employed full-time, 14.7% work part-time, 9.9% are unemployed, and 31.5% are not in the workforce. In comparison, New Zealand's overall unemployment rate is 4%.⁸⁴
110. These economic challenges are deeply rooted in the historical injustices of raupatu. The enduring impact of land confiscation has driven urbanisation as a response to seek improved job opportunities and economic stability.
111. This urbanisation means not only a physical disconnection from their whenua, hapū and iwi, but also a spiritual disconnection from tikanga Māori and te ao Māori within their daily lives.
112. Those who chose to remain on their whenua face the historical trauma of living where the invasion and impacts of raupatu occurred, thereby enduring constant reminders of this trauma.

EIGHTH CAUSE OF ACTION: ONGOING STIGMA

BREACH

113. The Crown has breached its duty of partnership to Ngāti Rua and Whakatōhea.

⁸² Te Whata “Whakatohea: Employment” (2018) Te Whata <www.tewhata.io>

⁸³ Statistics New Zealand “2018 Census Place Summaries: Opotiki District” (2018) <www.stats.govt.nz>

⁸⁴ Statistics New Zealand “2018 Census Place Summaries: Opotiki District” (2018) <www.stats.govt.nz>

114. The Crown has failed to adequately acknowledge and remedy its historical wrongdoings against Ngāti Rua and Whakatōhea.
115. The Crown has failed to ameliorate or remedy the unjust and wrong labelling of Ngāti Rua and Whakatōhea as “rebels”.
116. The Crown has failed to properly acknowledge its wrongdoing and subsequent breaches of Te Tiriti as a direct result of the invasion.

PARTICULARS

117. The rebel label carries with it the burden of shame, misplaced culpability and loss of self-esteem for members of Ngāti Rua and Whakatōhea.
118. This stigma is further exacerbated by the legislative repercussions, as the depiction of Whakatōhea as rebels was used by the Crown to justify confiscating Whakatōhea land, adding an additional layer of injustice and loss to the community's historical burden.
119. The shame, whakamā and other painful emotions evoked by this painful chapter of Whakatōhea history make it challenging for many to engage with the topic even to this day. The heaviness associated with discussing this history means that it is often met with reluctance by members of Whakatōhea.
120. For the claimant, confronting this history, while necessary for his claim, is nonetheless burdensome, as he is compelled to talk about these painful events as part of the claim process.
121. Despite acknowledging that the Crown unfairly labelled Whakatōhea as rebels and the subsequent consequences,⁸⁵ the Crown has failed to

⁸⁵ *Whakatōhea and Te Tambarau o Te Whakatōhea and the Crown: Deed of Settlement of Historical Claims* at 119.

acknowledge the ongoing stigma experienced by Ngāti Rua and the other hapū of Whakatōhea.

122. The claimant says this is a significant affront to the mana of Ngāti Rua, as well as to the mana of the other hapū of Whakatōhea.

NINTH CAUSE OF ACTION: LOSS OF TE REO MĀORI

BREACH

123. The Crown breached Te Tiriti in respect of te reo.
124. Crown legislation, policies and practices promoted the use of English, while actively discouraging and punishing the use of te reo for the purpose of assimilating Māori into Pakeha society.

PARTICULARS

125. In 1873 a native school was built at Ōmarumutu for the children living on the Ōpape block.⁸⁶ Despite the Crown confiscation of their land, Ngāti Rua provided four acres of land for the school. Another native school was also set up by Ngāti Ira at Waioweka.
126. The Native Schools Act 1867 (“Native Schools Act”) established a schooling system with a strong agenda to assimilate Māori into Pākehā society.⁸⁷ The Crown saw native schools as an opportunity to improve race relations by inculcating Pākehā values and the English language in Māori.⁸⁸

⁸⁶ Dr Therese Crocker *An Overview of Maori Political Engagement in the North-Eastern Bay of Plenty 1871-2017* (Wai 1750, A11) at 54 and Walker, above n 28, at 144.

⁸⁷ Chrisloffel, *The Provision of Education Services*, (Wai 898 #A27), at 112.

⁸⁸ At 145 and 225.

127. Te reo Māori was actively suppressed in native schools during the first half of the 20th century, with corporal punishment used by teachers to discourage Māori children from speaking te reo.⁸⁹
128. Commonly, Māori parents also discouraged their children from speaking te reo at these schools, hoping that proficiency in English would enhance their children's life opportunities.⁹⁰
129. The restriction of te reo inflicted by the Native Schools Act has led to a deterioration of Ngāti Rua and Whakatōhea cultural identity and proficiency in te reo, both as a language generally and as a specific dialect.
130. As of the 2013 census only 30% of Whakatōhea could hold a conversation about everyday things in te reo Māori, in comparison with 18.4 percent of the total population of Māori descent.⁹¹
131. In 2018, 23.9% of the Māori population in the Opotiki district could speak Te Reo Māori, a rate significantly higher than the overall New Zealand Māori population at 17%.⁹² However, it is much less than the 96.4% who can speak English.⁹³
132. With the exception of a small number of kaumātua who can speak it, the dialect of te reo spoken uniquely by Whakatōhea has been all but lost.
133. Native schools played a pivotal role in creating a stigma around the Māori language, deliberately discouraging its use and associating speaking te reo with negative consequences. This fostering of reluctance among Māori to use their language, coupled with societal pressures and parental aspirations for English proficiency, collectively represents a breach of the Crown's duty

⁸⁹ At 145-146 and 225-226.

⁹⁰ At 120.

⁹¹ Statistics New Zealand "Iwi Individual profile: Whakatohea" (2013) <www.stats.govt.nz> at 7.

⁹² Statistics New Zealand "2018 Census Place Summaries: Opotiki District" (2018) <www.stats.govt.nz>.

⁹³ Statistics New Zealand "2018 Census Place Summaries: Opotiki District" (2018) <www.stats.govt.nz>.

to actively protect and promote te reo and tikanga within the education system, contributing significantly to the decline in te reo proficiency.

PREJUDICE

134. As a result of the Crown's breaches, the claimants, Ngāti Rua and Whakatōhea have suffered the prejudice pleaded to in this claim, including:

- a) Unjust blame for the killing of Völkner and Fulloon.
- b) Unjust labeling as "rebels" and imposition of punishments following the invasion of Ōpōtiki in July 1865.
- c) Enduring stigma and a sense of whakamā stemming from being unfairly labeled as "rebels" by the Crown.
- d) Over 50 Whakatōhea Māori deaths and numerous injuries resulting from the invasion.
- e) Loss of rangatira with experienced leadership due to the deaths caused by the invasion.
- f) Widespread pillaging, looting, and destruction of Ngāti Rua and Whakatōhea resources, causing immeasurable damage to their once-prosperous economy.
- g) Alienation from ancestral lands and the loss of pā, kāinga, wāhi tapu, and taonga.
- h) The forcible displacement of all Whakatōhea onto Ngāti Rua ancestral lands, contributing to land alienation and impacting relationships between hapū.
- i) Ngāti Rua were further prejudiced by having to share their ancestral land and resources with other Whakatōhea hapū as part of the Opape Native Reserve.
- j) Derogation of mana and consequent loss of economic, cultural, and political autonomy through the continuing erosion of rangatiratanga.
- k) Destruction of their traditional land tenure system.
- l) Loss of access to moana, awa and other waterways, and the forced cessation or drastic reduction of associated practices regarding kaimoana and other resources.

- m) Loss of economic capability, development, and opportunity.
- n) Loss of culture, tikanga, mātauranga, and te reo.
- o) Native schools actively suppressing te reo Māori, significantly contributing to a stigma around the language, fostering reluctance among Māori to use it, and resulting in its overall decline.
- p) Te reo and tikanga, as taonga of Whakatōhea Māori, suffering a decline.
- q) Forced displacement and subsequent movement into urban areas.
- r) Loss of connection to ancestral whenua and moana.

REDRESS

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

- a) A finding that this claim is well founded;
- b) A finding that the Crown has breached its duties under Te Tiriti;
- c) An apology from the Crown;
- d) Adequate compensation for the above pleaded breaches;
- e) Any other recommendation deemed appropriate by the Waitangi Tribunal.

DATED at Auckland this 23rd day of January 2024.



David Stone | Catherine Leauga | Charl Hirschfeld |



Barny Tupara | Matthew Kennelly

Counsel for the Claimant

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