



IN THE WAITANGI TRIBUNAL

IN THE MATTER

of the Treaty of Waitangi Act
1975

AND

IN THE MATTER

of claims in the Central North
Island Inquiry
(WAI 1200)

AND

IN THE MATTER

a claim by TE ARIKI
MOREHU, COLLEEN
ARIHANA SKERRETT-
WHITE WILLIAM
WHAKATAKI EMERY,
KELVIN TAUPAKI CASSIDY
and DENNIS WERAHIKO
CURTIS For And On Behalf Of
The Original Owners Of The
Land Known As TAUMANU,
HAUMINGI, OKATAINA,
WAITANGI, TOKERAU,
KUHARUA, TE TAUTARA,
TE TAHUNA NGATI
TE RANGIUNUORA HAPU,
TE ARAWA in relation to
breaches of the Treaty of
Waitangi by the Crown as Treaty
partner to the disadvantage and
prejudice of the hapu

STATEMENT OF CLAIM

DATED THE 8TH DAY OF DECEMBER 2004

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Counsel: Annette Sykes and Jason Pou

1.0 THIS CLAIM:-

- 1.1** Is brought by Messrs Te Ariki Morehu, Colleen Arihana Skerrett-White, William Whakataki Emery, Dennis Werahiko Curtis and Kelvin Taupaki Cassidy on behalf of the descendants of Ngati Te Rangiunuora , Nga Uri o Nga Tokotoru o Manawakotokoto (the descendants of Rangitihī and Manawakotokoto namely Rakeiaio, Kawatapuarangi and Apumoana).
- 1.2** Is a statement in respect of losses both spiritual, cultural, general and economic, suffered as a consequence of Crown acts and omissions in breach of the guarantees of Te Tiriti o Waitangi suffered by the members of Ngati Te Rangiunuora in:
- 1.2.1 Lakes Okataina and Rotoatua and their tributaries and waterways;
 - 1.2.2 Okataina Scenic Reserve and surrounding lands;
 - 1.2.3 Lakes Rotoiti, Rotoehu, Rotoma and their tributaries and waterways;
 - 1.2.4 Rotoiti 15 Block;
 - 1.2.5 Waitangi Baths;
 - 1.2.6 Tokerau Blocks;
 - 1.2.7 Kuharua Blocks
 - 1.2.8 Haumingi Blocks
 - 1.2.9 Matawhaura Maunga; and
 - 1.2.10 Maketu Estuary.
- 1.3** This Statement of Claim sets out the grievances of Te Rangiunuora in the Central North Island District Inquiry of the Waitangi Tribunal.
- 1.4** From the outset, it has been the intention of the claimants to approach the description of their histories in a holistic and contextual sense, so that the true

prejudice of Crown injustice and prejudice may begin to be understood as it was meted out to their tuupuna. It is unfortunate that administrative efficacy has been put ahead of their '*need to heal*'. The pressured and hastened timeframes which have taken no consideration of incomplete research have therefore denied the ability of Te Rangiunuora to explain their histories in their unique way.

- 1.5 In this absence of complete contextual analysis, the actual impacts of Crown action and omission will perceptually dilute which will preclude a full understanding of the plight of the peoples of while their histories remain hidden within the dusty tomes of western bureaucratic justification. Not only will the histories remain untold, there will be no one left to tell them.
- 1.6 This claim focuses on the peoples whose histories merge in collective pasts, guiding and defining the many existences of their descendants out into Te Ao Hurihuri and into yet to be constrained futures, weaving the peoples into the dynamic tapestry of intersecting polities that connect the diverse realities that have characterised their histories and will continue to shape their many futures.
- 1.7 While this claim presents the stance of Te Rangiunuora in their efforts to defend their traditional ways and their pasts, it is also a sign of their desire to defend their rights to govern and to determine their destinies and those of their descendants that will follow.
- 1.8 The claim relates to the areas of land, lakes, rivers, islands, traditional fishing grounds, forests and the indigenous flora and fauna and other species; washy tapu and other sites of cultural, spiritual and historic significance; and other taonga tuku iho me nga taonga heke iho, which the claimants continue to connect and relate to notwithstanding the lego-political separations that have been imposed in the Crown's systematic assumptions of sovereignty and denigration of rangatiratanga that eroded away the last vestiges of the turangawaewae on Ngati Rangiunuora
- 1.9 This claim focuses on coercion and sacrifice, the sacrifices that nga tangata whenua were coerced into for the benefit of an emerging nation.

- 1.10** The claimants state that they are or are likely to be prejudicially affected by the Ordinances, Acts, Regulations, Proclamations, Notices and other Statutory Instruments, and the policies, practices, acts or omissions of the Crown as are particularised in this statement of claim.
- 1.11** The claimants further state that all of the Acts, Regulations, Orders, policies, practices and actions taken, omitted or adopted by or on behalf of the Crown referred to are and remain inconsistent with the terms and principles of the Treaty of Waitangi.
- 1.12** The Claimants say that they, their tipuna and their mokopuna that will follow, have been, are, or are likely to be prejudicially affected by the ordinances, acts, regulations, proclamations, notices and other statutory instruments and the policy, practices, acts or omissions of the Crown which were and are inconsistent with the Treaty of Waitangi and its principles as further set out in this amended statement of claim.
- 1.13** The claimants will rely upon the evidence that is adduced before the Waitangi Tribunal throughout the Central North Island District Inquiry to the extent that it is relevant to the lands within the tribal domains of their tipuna and is descriptive of the process of colonization that saw the descendant Taupo whanau and hapu marginalized and invisibilised in processes introduced and supervised by successive Crown administrations.

2.0 AREA

- 2.1** The Area affected by this Claim is situated in the Waiariki Maori Land court area of Bay of Plenty.
- 2.2** They assert the absolute right to take care of their Taonga - its spaces, places and varied and diverse faces; in accordance with their obligations of kaihakitanga the natural responsibility to care for the dimensions of their universe is implicit and, like caring for one's elders, they assert that the obligation is hereditary.
- 2.3** To understand this they rely on their traditional baselines which give rise to a specific and unique way in which they perceive the world that embraces them.
- 2.4** They rely on their ancestors' view of the area which they lay claim to which is more particularly described below. Through this traditional view the claimants assert a common baseline from which derives their caregiver roles both as hapu and individuals which emphasises the innate connection of their environment to their universe, to their whakapapa lineage, their wairua base, and to their natural responsibilities as Kaitiaki of the dominion of Ngati Te Rangiunuora and its surrounds.

3.0 NGATI TE RANGIUNUORA

- 3.1 Ngati Te Rangiunuora are the descendants of Kawatapuarangi, the son of the tupuna Rangitahi and his wife Manawakotokoto. Rangitahi is the great-great grandson of Tamatekapua, captain of the Arawa canoe; Rangitahi had eight children from his four wives who are referred to as Nga Pumanawa e waru o Te Arawa (the eight pulsating hearts of Te Arawa).
- 3.2 Ngati Te Rangiunuora Rangatira were renown for their fighting prowess and occupied and protected many areas around the Rotoiti, Rotoehu, Okataina and Rotoma Lakes area and of course Maketu.
- 3.3 Ngati Te Rangiunuora also held the 'mana whenua' of a vast area, Haumingi, of ngahere (podocarp forest) sought after for the building of waka and whare whakairo.
- 3.4 Ngati Te Rangiunuora are descendants of Te Rangiunuora and Moho but have descent from all of Pikiaro and Hinehopu's children with direct descent through intermarriage from Rakeiao (Ngati Rongomai), Takinga (Ngati Te Takinga), Ngati Hinekura and Tarawhai (Ngati Tarawhai).

3.5 Nga Marae o Ngati Te Rangiunuora

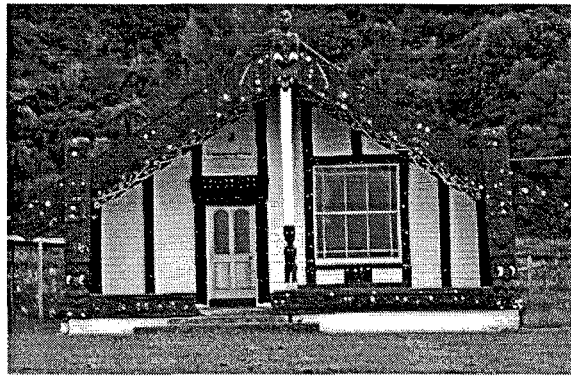
3.5.1 Punawhakareia Marae

3.5.2 Te Punawhakareia o Rakeiao, located on the shores of Lake Rotoiti, is the name of the area that the principle Whare Tupuna of Ngati Te Rangiunuora sits.

3.5.3 The whare 'Uenuku mai Rarotonga' is the oldest meeting house in Te Arawa that is still in use, The whare originally stood at Maketu and was carved approximately 300 years ago. The whare belonged to Matene Te Huaki,, a Rangatira of Ngati Te Rangiunuora and was transported by horse and cart through the Pongakawa valley to Rotoiti in 1909 and re-erected at Punawhakareia.

3.5.4 The whare kai is 'Te Ao Kapurangi' wife of Uenuku.

3.5.5 The original Pa in the area was located at Komuhumuhu (Gisborne Point) an area adjacent to the current location of the marae.



Uenuku mai Rarotonga



Te Ao Kapurangi

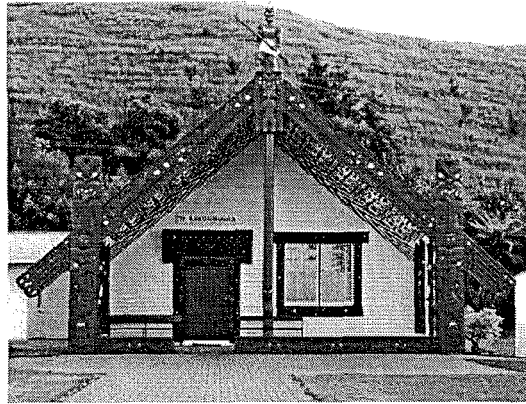
3.5.6 **Taurua Marae**

3.5.7 Te Rangiuuora is the Whare Runanga that is located at Whenua Kura Taurua on the shores of Lake Rotoiti above Emery's store.

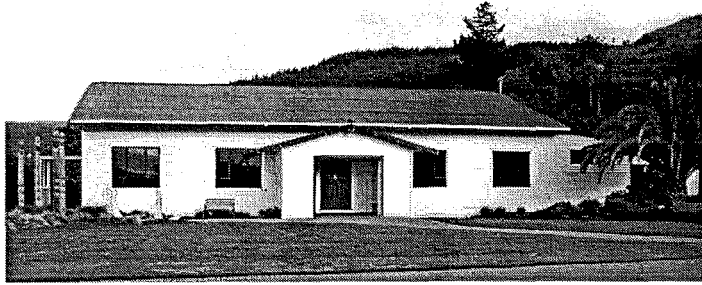
3.5.8 Our tupuna Haukeka is the tekoteko of this whare.

3.5.9 Te Wetengauru is the name of the whare kai.

3.5.10 The original "Te Rangiuuora" stood at Okataina near the Makatiti dome which is also is burial place of Te Wetengauru, and a house of the same name also stood at Te Komuhumuhu and later on the Waitangi block at Rotoehu.



Te Rangiuuora



Te Wetengauru

4.0 PAPTUANUKU AND BLOCKS

- | | | | |
|------------|---------------------|-------------|------------------|
| 4.1 | Waitangi 1-3 | 4.7 | Te Tahuna |
| 4.2 | Taumanu Lands Trust | 4.8 | Tokerau 14 |
| 4.3 | Tautara | 4.9 | Paengaroa Sth 5 |
| 4.4 | Haumingi | 4.10 | Taheke Paengaroa |
| 4.5 | Ruahine Kuharua | 4.11 | Te Hachaenga |
| 4.6 | Kuharua | | |

5.0 NGA WHA/GEOTHERMAL

5.1 Waitangi 3

5.2 Ruahine Kuharua

5.3 Paengaroa South 5

6.0 WAIPUNA ARIKI/WATERWAYS

- 6.1** Lake Rotoiti,
- 6.2** Lake Rotoehu,
- 6.3** Lake Rotoma,
- 6.4** Lake Okataina; and
- 6.5** Other capillaries of Papatuanuku

7.0 NGAHERE/FORESTS

7.1 Haumingi

7.2 Rotoiti 15

7.3 Taumanu

8.0 NGA WAAHI TAPU

- 8.1** Taumanu
- 8.2** Wharetaingamoko
- 8.3** Haumingi 15
- 8.4** Te Oremu (Te Weta Bay)
- 8.5** Matawhaura
- 8.6** Te Puna o Rakeiao

9.0 PRELIMINARY MATTERS

9.1 The Tribunal has required the Claimants, on behalf of Ngati Rangiunuora, to file a particularised statement of claim for the purposes of the Central North Island inquiry. The particulars set out in this statement of claim are provided in response to the Tribunal's request, subject to the following provisos:

- 9.1.1 The particulars are to assist with the Tribunal process by identifying issues at an early stage so as to enable the Crown to respond to the claims in a detailed and meaningful manner. However, the particulars are not and cannot be a complete statement of the grievance of Ngati Rangiunuora;
- 9.1.2 The provision of particulars does not affect the Crown's obligation to fully disclose in good faith all information relating to its dealings with Ngati Rangiunuora, nor does it affect the Tribunal's inquisitional role as a Commission of Inquiry;
- 9.1.3 Ngati Rangiunuora considers that the Crown has a duty to participate on a good faith basis in this process. An objective of the particulars is to enable the Crown to identify at the outset those claims that it considers are legitimate, so as to avoid unnecessary argument. The claimants assisted by the peoples of Ngati Rongomai have identified the particulars included in this statement of claim in good faith on the understanding that the Crown, as its Treaty partner, will act also in good faith in recognising such claims;
- 9.1.4 The provision of particulars does not in any way alter the position held by the claimants and the peoples of Ngati Rongomai that emphasizes the systemic attack on the tino rangatiratanga of Ngati Rongomai and their constituent whanau;
- 9.1.5 As such, the paragraphs that follow provide particulars of Crown acts, omissions, practices, and the resultant breaches of the natural rights of Ngati Rangiunuora as encapsulated by the principles of the Treaty. While

each encroachment onto these rights is in itself representative of a deeply felt grievance, the cumulative effect of these encroachments is perhaps of more significance. These continuous and repeated breaches by and on behalf of the Crown and its continuing failure to honour obligations and duties has compounded the detrimental impacts Ngati Rongomai have had to contend with over time; and

- 9.1.6 The particulars, while by no means exhaustive, highlight the continual and repeated attempts by the Crown to encroach on and diminish Te Tino Rangatiratanga o Ngati Rangiunuora and their constituent whanau and hapu. As such they will provide a flavour of the manner in which the Crown acted.

10.0 PRINCIPLES OF THE TREATY

10.1 Without limiting the Treaty the Claimants assert that the following are principles of the Treaty each of which they say is relevant to the present claim.

10.2 Property

10.2.1 A fundamental principle of the treaty is the protection and preservation of Maori property and taonga: [*New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, PC, 517].

10.3 Custom

10.3.1 A fundamental principle of the Treaty is the preservation of Maori custom including an ongoing distinctive existence as a people albeit adapting as time passed and the combined society developed [*Taiaroa v Minister of Justice* (unreported HC Wgn CP 99/94, decision McGechan J, 29 August 1994 at p69)].

10.3.2 Flowing from these two principles are the further principles:

- i Maori were and are to be protected not only in the possession of their property but in their right to control such property in accordance with their own customs and having regard to their own cultural preferences [*Motunui-Waitara Report 2 ed.* 1989 p51] and
- ii to have protected their tino rangatiratanga being the full authority, status and prestige with regard to Maori possessions and interests: [*Manakau Report*, p67].
- iii The preservation for Maori of their customary title [*Te Runanganui O Te Ika Whenua Inc. Soc. V Attorney-General* [1994] 2 NZLR 20, CA 24: *Orakei Report* p135].
- iv The requirement on the Crown to take active steps to ensure that Maori have and retain full exclusive and undisturbed possession of their culture [*Orakei Report*, p135].

10.4 Good Government

10.4.1 A fundamental principle of the treaty is that Maori are entitled to the benefit of good government. Such good government should exhibit itself in at least the following ways:

- i Equal treatment by the law and by all Governmental Agencies (except to the extent necessary to redress past injustices and the results of that in which event more favourable treatment is appropriate). [Note the Labour Government Statement of 1989 – Principle (C)].
- ii Matters affecting Maori land should be determined by Maori who should be permitted to maintain their own way of reaching agreements. [*Taranaki Report* pp281–282].
- iii Conditions that would enable Maori, despite settlement, not only to survive but to progress because of it [*Muriwhenua Fishing Report*, p194].
- iv Maori would be and are now entitled to peace and law and order. [*New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 CA at 715 per Bisson J].
- v Protection of particular Maori interests. [*Manukau Report*, p69].
- vi A duty not to use any powers of compulsory acquisition of Maori land or resources without first consulting those Maori affected and without negotiating genuinely with them as to the purchase or, at least, paying proper compensation. [*The Ngati Rangiteaorere Report* pp47–48; *Te Runanganui O Te Ika Whenua Inc Soc v Attorney-General* [1994] 2 NZLR 20, CA at 24].
- vii An inability to avoid the Crown's obligations by any delegation of the Crown's duties under the Treaty. [*Motunui-Waitara Report and the Manukau Report*, p73].

10.5 Fiduciary Duty

- 10.5.1 A fundamental principle of the treaty is that the Crown owes a fiduciary duty of good faith to Maori [*Te Runanga O Wharekauri Rekohu Inc. v Attorney-General* [1993] 2 NZLR 301, CA 305–306].
- 10.5.2 Such duty includes the obligations:
- i To use any right of pre-exemption to protect Maori from excess purchases, and not to use it to stifle competition for Maori land so as to deprive Maori of a fair price;
 - ii The duty not to use other unfair means when dealing with Maori;
 - iii The obligation to abide by the Christian and traditional Maori values the treaty emphasised [*The Te Roroa Report*, p30].

10.6 Economic Protection

- 10.6.1 Flowing out of the foregoing is the fundamental principle that the Crown owes a duty to protect preserve and promote the economic position of Maori. This includes:
- i A duty on the Crown to ensure that Maori were and are left with sufficient land and other resources for their maintenance and support and livelihood and that each hapu maintained sufficient endowment for its foreseen needs [*Orakei Report*, p147].
 - ii Such endowment is not just an endowment sufficient to survive but sufficient to profit and to prosper and includes the facility to fully exploit such land and resources [*Muriwhenua Fishing Report*, p194].
 - iii Maori have a right to develop and expand such resources using modern technologies and are not to be consigned to those technologies known at the time of the Treaty: [*Muriwhenua Fishing Report*, p220; *Ngai Tahu Sea Fisheries Report*, pp253–254].

- iv The Crown does not take advantage of the poverty of Maori, created at least in part by the Crown, to acquire land from Maori which Maori are selling just so the Maori can buy food to survive.

10.7 Overriding Principles

- 10.7.1 An overarching principle of the Treaty is that the Crown should deal with Maori in an honourable and good faith way (the means), and should ensure the protection and prosperity of Maori as a people including their economic, physical, spiritual and cultural well being (the ends).
- 10.7.2 Another overarching principle of the Treaty is that the Crown should remedy past breaches in all but very special circumstances [*New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, CA, 664-665].

11.0 LEGISLATING AWAY THE TURANGAWAEWAE

11.1 Colonial development required the transformation of most of New Zealand's forested wilderness into pasture, a transformation that would realize the twin aims of advancing the economic fortunes of the colony, as well as civilizing what was seen as a barbaric landscape, was used as a justification for the creation of scenic reserves which was a reaction to the environmental destruction, as legislators sought to preserve the last vestiges of forest wilderness for posterity.

11.2 The Crown's appropriation of the last areas of wilderness was a continuation of a colonial agenda which was achieved by:

- i wresting ownership and control of those wilderness areas that were still in Māori ownership through the use of public works land taking legislation.
- ii Imposing European discourse over pre-existing Māori narratives by way of scenery, and natural resource preservation legislation to facilitate the displacement of Māori in the landscape.
- iii wresting and taking over ownership and control of the burgeoning industries previously controlled by Māori in the Central North Island districts such as tourism through scenery preservation and resource management legislation.

12.0 BROKEN PROMISES AND THERMAL SPRINGS

12.1 Breach

12.1.1 Contrary to its obligations to act with Maori in good faith, the Crown:

- i Entered into and then failed to honour the terms of the Fenton Agreement;
- ii used the Fenton Agreement in conjunction with other colonial mechanisms such as the Native Land Court to manipulate Maori tradition and custom in order to secure the resources of tangata whenua;
- iii failing to rectify the breach of the terms of the Fenton Agreement with knowledge that it was causing detriment to Maori; and
- iv eroded the rangatiratanga of creating and entrenching their economic dependence on the Crown.

12.1.2 In breach of its obligations to actively protect Maori in possession of their taonga, the Crown passed legislation such as the Thermal Springs District Act 1881 to :

- i acquire the lands of tangata whenua;
- ii acquire the resources in particular Geothermal of tangata whenua
- iii undermine the rangatiratanga of tangata whenua over their lands, resources and esteemed institutions

12.2 Particulars

12.2.1 On 25 November 1880 the Crown and certain Arawa rangatira entered into an agreement known as the Fenton Agreement.

12.2.2 This was the Crown's first move towards gaining control of tourism. Under the 'Fenton Agreement', Te Arawa generally, agreed to lease sufficient land for a township for Pākehā settlers.¹

¹ McBurney "Scenery Preservation & Public Works Takings" Doc A82, p29

12.2.3 The Crown then set about failing to honour the terms of the agreement. Whereas Fenton had agreed that the Komiti Nui o Rotorua would adjudicate title claims, effectively acting as a ‘Māori’ Native Land Court, it was not long before the Native Land Court itself was brought in to re-litigate the Komiti decisions.²

12.3 Facts

12.3.1 On 25 November 1880 the Crown and certain Arawa rangatira entered into an agreement known as the Fenton Agreement.³

12.3.2 Purportedly giving effect to the said Fenton agreement, the Crown enacted the Thermal Springs District Act on 24 September 1881.⁴ This Act was subsequently amended by the Thermal Springs Amendment Act 1883.⁵

12.3.3 The Thermal-Springs Districts Act effectively re-imposed Crown pre-emption with respect to land containing ‘ngawha, waiariki, or hot or mineral springs, lakes rivers or waters.’⁶

12.3.4 Section 2 of the Thermal Springs District Act 1881 enabled the Crown to proclaim districts within which “there are considerable numbers of the ngawha, waiariki, or hot or mineral springs, lakes, rivers or waterways”.

12.3.5 The Preamble to the Thermal Springs Act 1881 stated:

Whereas it would be advantageous to the colony, and beneficial to the Maori owners of the land in which natural mineral springs and thermal waters exists, that such localities should be opened to colonization and made available for settlement: And whereas it is expedient that powers should be given to the Governor enabling him to make arrangements for effecting that object...

² Doc A82, Ibid p29

³ Kathryn Rose “The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century” Doc A70, p75

⁴ Doc A70, Ibid p75

⁵ Doc A70, Ibid p111

⁶ McBurney “Scenery Preservation & Public Works Takings” Doc A82, pp29-30

- 12.3.6 Section 3 of the said Act prohibited private negotiations within the proclaimed areas.
- 12.3.7 On 27 October 1881 an area of 646,000 acres was proclaimed under the Thermal Springs Act 1881.⁷
- 12.3.8 The proclaimed area included substantial sections of the rohe of the claimants.⁸
- 12.3.9 The Fenton agreement led directly to numerous investigations of title to blocks of land by the Native Land Court in the Rotorua region, including blocks within the rohe of the claimants.⁹
- 12.3.10 Investigations of title to blocks within the rohe of the claimants, and to which the claimants sought, or were awarded interests included, but are not limited to:
- i Taheke block (west of Rotoiti) which was divided into three main blocks plus two smaller ones for an urupa and a school site;
 - ii Paengaroa North (Kaituna River) 739 acres which was divided among 352 owners with lots of between 14 and 50 acres to each of the seven main Ngati Pikiao hapu and a swamp (400acres) being awarded to all the owners;
 - iii Waione Block of 6,780 which was divided into four portions;
 - iv Okataina area which was divided into three portions;
 - v Paehinahina Block which was divided into two portions;
 - vi Rotoma Block which was divided into two portions;
 - vii Te Tautara area which was divided into two portions; and

⁷ Doc A70, Ibid p97

⁸ Doc A70, Ibid p98, fn

⁹ Doc A70, Ibid p115

viii Te Rotoiti 25,000 acres, much the largest block along with Te Taheke which was divided into 12 portions like slices of a pie radiating around Rotoiti.¹⁰

12.3.11 The subdivisions reflected inter-hapu rivalries and either the courts confirmation of divisions agreed among the claimants or its arbitration when they did not agree.¹¹

12.3.12 Adjustments were made within and between the subdivisions of Rotoiti and Okataina. A list of owners and their respective shareholdings in the title, was determined for each of the blocks. Thus the process reflected not only a determination of boundaries as between iwi, and between hapu, but a listing of individual owners, according to the long-standing requirements of the Native Land Acts.¹²

12.3.13 These investigations of title by the Native Land Court within Te Arawa led to the:

- i Abandonment of cultivations, resulting in less food;¹³
- ii Substantial direct and indirect costs;¹⁴ and
- iii Surveys.¹⁵

12.3.14 The calculation and apportionment of survey liens imposed substantial costs on non-sellers within a block.

12.3.15 Land Court hearings were often very burdensome and expensive for the claimants, forcing the claimants to relocate themselves for the hearings, and burdening them further with substantial food and accommodation costs and court fees.

¹⁰ Loveridge "The Most Valuable of the Rotorua Lands: Alienation and Development in the Ngati Pikiao Blocks 1881-1960" Doc A6, pp27-32 and maps pp21-26

¹¹ Alan Ward "Ngati Pikiao Lands. Loss of Tribal Ownership and Control" Doc A9, p60

¹² Doc A9, Ibid p60

¹³ Kathryn Rose "The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century" Doc A70, p120

¹⁴ Doc A70, Ibid p121

¹⁵ Doc A70, Ibid pp121; 274-78

12.3.16 The process of the land court was divisive and caused enormous conflict for the claimants in many respects:

- i All members of Ngati Pikiāo were connected by whakapapa, and all could relate to several hapu (through two parents, four grandparents etc). All could trace descent from the same eponymous ancestors including Tamatekapua; Kawatapuārangi; Pikiāo or Waitaha –a-Hei. Whether they chose to claim from the most remote ancestor or a more slightly proximate one depended upon whether they wanted to emphasise their commonality or their distinctiveness. The court process failed to recognise this. The fact that people could connect to more than one hapu did not mean that they would assert randomly in all interests. Everyone had a primary hapu identification and primary hapu had particular obligations to manaaki particular areas of land. There was a system of reciprocal obligations in place, and boundaries on the ground did not have the pre-eminence that they assumed in later court hearings.
- ii The availability of the court process itself provided the incentive to divide formally customary estates wherein rights had not previously been sharply divided. One witness said that the falling out within Ngati Pikiāo over the Rotoiti Block was not really over the “take” of each group, but rather over the “rohe” that is the rigid boundary lines required by the court process.¹⁶
- iii Once applications with the court were lodged, obligations to meet survey costs and court fees intensified the need to secure court title to a portion of land.

12.3.17 The process of the court created tension amongst and within Ngati Pikiāo hapu because applicants to the court perceived the advantage in being first before the court. By the 1900 these tensions had become acute and Ngati

¹⁶ Tom Bennion “Relations between Ngati Makino and other Hapu of Ngati Pikiāo in the 19th Century” Wai 46 doc M-16 pp1-3

Pikiao hapu were much more aware of their separate interests and less willing to rely on the traditional ties with other hapu to ensure that they were included in particular blocks. The fragmentation of interests in the Rotorua case was extreme and commented on in exasperation by the court.¹⁷

12.3.18 During the hearing splits even began to appear within hapu, at times threatening to fragment into whanau claims, but the court blocked this by imposing a time limit for new claims. The court itself described the divisions as 'riri whanaunga'.¹⁸

12.3.19 The Rotoiti example is an example of how land court processes introduced huge modifications to customary patterns.

- i It put sharp surveyed boundaries between hapu who were inter-related and interacted with one another across their various primary village and cultivation areas;
- ii It converted the various kinds of customary rights into shares in a title to Maori freehold land. The incidents of such title were in many respects very different from the incidents of customary title; subject to certain statutory controls, they included the right in each individual to severally alienate his or her share in the title; and
- iii There was no ability to distinguish between the primary rights of the hapu tuturu of the land, and of those rights holders admitted by aroha arrangements.¹⁹

12.3.20 By 1895, partition, and the listing of individual names in the title together with their respective shareholdings, were established practices. The policy of the Crown to individualise Maori titles was abetted by the aspiration of sections of the rights owners to deal in land or develop land 'independently' of the tribe. The kinds of titles created in Ngati Pikiao

¹⁷ Ibid. p10

¹⁸ Alan Ward "Ngati Pikiao Lands: Loss of Tribal Ownership and Control" Doc A9, p63

¹⁹ Doc A9, Ibid pp63-64

traditional land gave all legal authority to the named owners of various blocks (subject to statutory controls) and none to the tribe as a whole.²⁰

12.3.21 Hearings were long and arduous for the claimants and resulted in foreign, individualised and fragmented title. The Haroharo block went before the Native Land Court on 24 August 1914 under the Native Land Act 1909. The hearing was before Judge Browne. Title was not ordered until 23 March 1917 where 5323.00000 shares were awarded to 555 owners.²¹

12.3.22 The lands administered by the Rotoiti 15 Trust are situated to the southeast of Lake Rotoiti, and are divided into three separate locations. They highlight in their management the ongoing problems of fragmentation that have beset the peoples of Ngati Pikiao.

12.3.23 The largest area, immediately southeast of Lake Rotoiti stretches almost to Lake Tarawera in the south. A second smaller area is situated on the south-eastern side of the Tarawera Forest. The remainder is a piece of land leased from the Crown, and situated immediately to the south of the Tarawera Forest. The lease was negotiated in exchange for an area of Rotoiti 15 land which the Crown now leases as scenic reserve.²²

12.3.24 One of the main blocks in Rotoiti 15 is Rotoiti 14 which was created in March 1970. Its constituent blocks were Pukearuhe and Hingarae, with some 30 subdivisions of the Haroharo; Haumingi; Okataina and Waione blocks.²³ The original titles to these lands had all been investigated by 1908, but some of the blocks were not surveyed until after that date.²⁴

12.3.25 Subdivision of the blocks had largely occurred in the period 1920 to 1950. Okataina 3B the largest of the subdivisions to be included in Rotoiti 14,

²⁰ Doc A9, Ibid p64

²¹ LHAD, Haroharo Block History.

²² Eileen Whitehead Barrett "The Rotoiti 15 Trust" Doc A8, p3

²³ Doc A8, Ibid

²⁴ Doc A8, Ibid p3

covered nearly 3289 acres but Hingarae, the smallest block was only 4 acres 3 roods 2.5 perches.²⁵

12.3.26 The application for the amalgamation of the blocks was submitted by the Deputy Registrar with 11 owners listed in support, including Kepa Ehau, Pokiha Hemana, Heta Waretini, Michael Tutere Hohepa, Wirihana Waaka, Te Mapu o te Rangi Morehu, Richard Vercoe, Rangi Hunuhunu, Maruao Takuira and Ikatapu Kingi. The application did not give their hapu affiliations nor indicate which blocks the applicants had interests in.

12.3.27 The application was on the basis that the lands could be better worked as a single unit under common ownership. This application came almost 100 years after the introduction of the Native Land Court into the claimants' domains. It is ironic that under traditional tribal ownership the land would have effectively remained a single unit under common ownership from the first and the cost and effort of subdivision and subsequent re-amalgamation could have been entirely avoided.

12.3.28 Simultaneously with the creation of Rotoiti 14 and the Rotoiti Trust, the Court made provision for the Responsible Trustee if so approached by Her Majesty the Queen (Lands and Survey Department) to conduct an exchange of any one or more of the lands in the second schedule hereto for lands offered by the crown. The lands in the second schedule were all those parts of Rotoiti14 which bordered the eastern side of the Okataina Scenic Reserve. The Responsible Trustee was the Trust Department of the New Zealand Insurance Company.²⁶

12.3.29 The Land court minutes record that the Crown had indicated two weeks prior to the amalgamation hearing of Rotoiti 14, that it wanted to obtain these listed lands "for public purposes as a Scenic Reserve, by acquisition of the fee simple".²⁷ However the owners made it plain that they were not

²⁵ Doc A8, Ibid p3

²⁶ Doc A8, Ibid p20

²⁷ Doc A8, Ibid pp20-21

interested in selling. The Commissioner of Crown Lands therefore instructed that all other possible means of acquisition be investigated.

12.3.30 At the court hearing of the Rotoiti 14 amalgamation the Department of Lands and Survey on behalf of the Crown, filed a notice requesting that the proposed terms of the Trust be amended to allow for an exchange of lands. It asserted that the exchange of crown land for lands of the trust could be beneficial to the Maori owners as being suitable for afforestation purposes. The Counsel appearing for the Department of Lands and Survey was unable to give any indication what Crown lands might be offered.²⁸

12.3.31 Barely a year after the creation of Rotoiti 14, all the lands bordering the Okataina Reserve to the east comprising some 2670 acres plus all of Okataina 12 to the west and north of the Reserve another 5282 acres were transferred to the Crown. In exchange the owners were given Ruawahia 10, known as the Matakite Dome, and Matahina 10. Under a new order issued from the court on 9 July 1971, these two areas totalling some 7000 acres were amalgamated with the remainder of Rotoiti 14 and Rotoiti 15 came into being. The exchange thus appears to have resulted in a loss of some 900 acres on the part of the owners.²⁹

12.3.32 The Rotoiti 15 Trust was vested in the New Zealand Insurance Company as Responsible trustee under section 438 of the Maori Affairs Act 1953. As had been the case with Rotoiti 14 it was again the Responsible Trustee who had effective control of the affairs of the Trust again with no statutory obligation to consult the advisory trustees.

12.3.33 Only 10 owners of the Rotoiti blocks were present in the Court when the trust was established. A proposal to lease the lands was promulgated at the same time. Tasman Pulp and Company would lease Rotoiti 15. This company was already exploiting the Tarawera Forest area and through the proposed arrangement acquired a much more compact area of operations

²⁸ Doc A8, Ibid p21

²⁹ Doc A8, Ibid p22

by adding Matakite Dome and the former Matahina 10, than it would have done if the afforestation area stretched westward into Okataina 12. With its processing plant being situated at Kawerau, the new block configuration was patently more convenient for Tasman, who would thus stand to improve profits by trimming costs.³⁰

12.3.34 Government policy in the early 1960's and early 1970's became strongly focused towards bringing idle Maori land into production through afforestation schemes. The Bay of Plenty was particularly targeted with the preferred method of achieving the goal being the amalgamation of blocks and the creation of trusts in order to permit large-scale planting of exotic trees.³¹

12.3.35 County councils in the region were also active promoters of the Government's policy to increase their rates takings from Maori land.

12.3.36 The Crown, likewise, was able to add substantially to the Okataina Scenic Reserve under the new arrangement, satisfying lobby groups such as the Forest and Bird Protection Society and the tourism sector. They also stood to gain from the indirect profits to the Company which would have a correlating increase in forestry revenue.³²

12.3.37 The benefit to the owners from Okataina 12 and Rotoiti 14 was not as obvious. Their land area diminished by some 900 acres and while the arrangements concluded in the creation of Rotoiti 15 may have consolidated the forestry company's interests into a more compact geographic area, they did not consolidate the owner's interest in a similar fashion.³³

12.3.38 Owners had no real control of Trust management and administration prior to the 1992 amendments to the Ture Whenua Maori Act. Their role was merely advisory through the advisory trustee provisions. Provision for

³⁰ Doc A8, Ibid p23

³¹ Doc A8, Ibid p61

³² Doc A8, Ibid p23

³³ Doc A8, Ibid p23

owner participation has improved since 1992 but still relates more to control of financial resources than control of the land itself. Even in the area of financial management, they are limited by the power of the Maori Land Court which can intervene if it sees fit.³⁴

³⁴ Doc A8, Ibid p62

13.0 SCENIC PRESERVATION

13.1 Breach

- 13.1.1 In breach of Te Tiriti o Waitangi, the Crown, introduced and then used the power to take lands to enable the acquisition of scenic sites, against the wishes of the owners.
- 13.1.2 In breach of the obligation to actively protect Maori in their possession of their taonga, and contrary responsibilities to act in good faith, the Crown acted unconscionably and eroded the tino rangatiratanga of the claimants by creating conditions of oppression by:
- i using threats of compulsory acquisition; and
 - ii actively disregarding promises made by the Crown; and then
 - iii playing on the Maori fear of vast land loss to force Maori into 'gifting land', including wahi tapu, to the Crown as scenic reserves.
- 13.1.3 In forcing Maori to accede to the imposition of scenic reserves, the Crown breached their obligation to actively protect the claimants taonga and waahi tapu.
- 13.1.4 Contrary to their obligation to protect tangata whenua tino rangatiratanga, the Crown consistently denigrated the Maori ethics of kaitiakitanga and manaakitanga, undermining tangata whenua rangatiratanga as their attempts and requests to administer their turangawaewae were ignored and belittled.
- 13.1.5 The Crowns racist and discriminatory action towards Maori who were treated more harshly than their Pakeha counterparts who interfered with the reserves shows a significant breach of Crown obligations to act with utmost good faith toward Maori.

13.2 Particulars

- 13.2.1 The Crown's assumption of ownership and care of special places on behalf of all New Zealanders assumed that Māori were not capable of carrying out such a stewardship role, despite the fact that kaitiakitanga has been and remains a fundamental kaupapa of tikanga Māori.
- 13.2.2 The provisions of the Scenery Preservation were used in a discriminatory fashion and those Pakeha who held interests in the land became largely exempt from them as they were used oppressively against Maori.
- 13.2.3 The Crown set about the establishment of committees and mechanisms to identify and then empower the Crown to compulsorily acquire and alienate Maori Land.
- 13.2.4 The government valued land that it desired to acquire at rates significantly below market rates.
- 13.2.5 Once the area had been roughly identified, alienation other than to the Crown was prohibited and development constricted as crown officials discussed the matters with the Maori owners who would be made aware of the Crown's powers of compulsory acquisition.
- 13.2.6 Restrictions on land development were used to ensure that the value of the land remained minimal.
- 13.2.7 The restrictions and the threat of large scale land alienation set the scene for coercive negotiations that were entered into between the Crown and Tangata Whenua as the identification of possible reserve areas was further refined.
- 13.2.8 Notwithstanding the initial opposition by Maori to the inclusion of their sacred places in the scenic reserves, they were persuaded that it was only by incorporating wāhi tapu into the reserves that their protection could be guaranteed.

- 13.2.9 Once the gift of the reserves had been made the Crown adopted the misleading position that it had been a “spontaneous action” on the part of Ngāti Pikiao, spurred by generosity and public spirit.
- 13.2.10 Tangata Whenua were forced to waive the paltry compensation that the Government would offer to ensure their connections to their whenua was maintained and that Europeans would not be appointed to manage their special places.
- 13.2.11 The Crown promised that following the gifting, they would not seek to take any more land for scenic purposes. This solemn promise was soon broken, when land set aside for a Township that was never built at the eastern end of Lake Rotoiti, was converted to an additional scenic reserve, rather than being returned to the owners.
- 13.2.12 The Crown then hampered Scenic Boards, frustrating their attempts to care for and maintain the reserved lands.
- 13.2.13 The Crown then eroded the authority of these Boards eventually completely usurping their authority and rendering them irrelevant.
- 13.2.14 The Crown treated tangata whenua prejudicially with regards to their presence and activities around the scenic reserves.

13.3 Recommending Alienation – Ascertaining Colonial Intention

- 13.3.1 The Scenery Preservation Commission was established under the Scenery Preservation Act 1903.
- 13.3.2 The Commission was specifically authorized to look at and recommend the reservation (and therefore acquisition by the Crown) of Māori-owned land for its scenic, thermal or historic properties.³⁵
- 13.3.3 Although the Commission was not empowered to take Māori land under the Acts of 1903 and 1906, it still took an inventory of land in Māori ownership that it judged suitable for reserving for scenic purposes.³⁶

³⁵ McBurney “Scenery Preservation & Public Works Takings” Doc A82, pp50, 62

13.3.4 In its first year of existence, the Commission recommended the acquisition of a total of 180,558 acres, all in Auckland Province and chiefly in the Whangarei and Rotorua districts.³⁷

13.3.5 The Commission also identified a series of blocks still in Māori ownership that should also be acquired for the purposes, including:

- i **Waikakarapiti Forest, Rotoma.** The Commission recommended that about 795 acres of Section 39A, Blocks XI, XII, XV, XVI, Rotoma S. D., through which the Rotorua-Whakatāne Road runs, be acquired from the Māori owners. Scenery preservation takings completed in the vicinity of Lake Rotoma included parts of the Taumanu, Waitangi and Rotoma blocks in 1910 and 1911.
- ii **Tamure-nui Lake.** The Commissioners recommended that about 35 acres around the shores of Lake Tamure-nui, comprising a strip about 5 chains wide, forming part of Block V, Rotoma S. D., and close to the Rotorua – Whakatāne Road.³⁸

13.3.6 In 1906, the Scenery Preservation Committee was dissolved. As part of the hand-over of responsibility for scenic reserves from the Tourist Department to the Lands Department, a report was drafted indicating what had become of the recommendations made over the previous two years by the Commissioners. The report's conclusions relating to land in the Rotorua/Taupo Districts are summarised as follows:³⁹

³⁶ Doc A82, Ibid p50

³⁷ Doc A82, Ibid p50

³⁸ Doc A82, Ibid p58

³⁹ Doc A82, Ibid p60

Block	Area	Owner	Status
Ngongotaha Mountain	480 acres	Māori	Approved - Urgent
Okoheriki & Whaiti-Kuranui- Land beside Rotorua Railway	3,428 acres	Māori	Approved estimated cost: £9,000
Land around Lake Okareka (Run 77)	6,400 acres	Crown Lease	Not Approved
Rotomahana-Parekarangi Rotorua-Wairoa Road	358 acres & 250 acres	Māori	Approved
Lake Taupo Shore	160 acres	Crown	Proclaimed Gazette No. 17 1/3/06
Waikato River Banks	600 acres	Crown	Proclaimed Gazette No. 95 2/11/05

13.3.7 On 9 April 1906, a draft of an advertisement to be inserted in regional newspapers notifying the public of the regulations governing scenic reserves. After citing the relevant legislation and the date that the land was gazetted a scenic reserve, the notice stated:⁴⁰

Every person who after this notification cuts or removes timber or in any way interferes with the said Reserve, or damages the scenic features thereof, is liable to a fine not exceeding one hundred pounds

13.4 Proclaiming the World and Alienating Aspiration

13.4.1 The 1903 Scenery Preservation Act allowed for the taking of land under the Public Works Act.

13.4.2 Such takings were in all but one respect similar to other takings under Public Works Act. In the case of takings for scenic purposes, the Crown imposed the added restriction that any compensation monies had to be paid to the Public Trustee and held in trust as an investment, rather than being distributed among the owners.⁴¹

⁴⁰ Doc A82, Ibid p60

⁴¹ Doc A82, Ibid p41

- 13.4.3 Notwithstanding the fact that apart from a 130 acre portion of Okataina No. 6, which was vested in the Crown in April 1908, all of the land around the lake was in Māori ownership
- 13.4.4 With scant regard for the Maori landowners, the Crown identified Lake Okataina as a potential tourist route and set up a venture with local Pākehā-run coach companies.
- 13.4.5 It did so with minimal consultation with local Māori. There is no evidence that Māori were to be included in the venture as partners. On the contrary, Māori were seen as having to be bought off with fencing wire.
- 13.4.6 This action reinforced a common perception among Pākehā at the time which was that Māori could not claim exclusive ownership of the scenic areas around Rotorua, and that such scenic wonders belonged to all New Zealanders and should therefore be under the control of the Crown. A perception which was already entrenched with respect to thermal areas, and legislated for in the Thermal-Springs Districts Act, 1881.
- 13.4.7 The acquisition by the Crown of forested land around the eastern Te Arawa lakes for scenic reserves was undertaken from about 1910 by the Department of Lands and Survey in concert with the Native Department and the Auckland branch of the Scenery Preservation Board.⁴²
- 13.4.8 Māori owners fought to minimise the impact of these takings in the face of the ambitions of the Crown.
- 13.4.9 The first Crown acquisition for scenic purposes was 34 acres of the Waitangi block on Lake Rotoma in 1910.⁴³
- 13.4.10 This was followed in 1911 by land in the vicinity of Hongi's Track, comprising some 73a 3r 39p of the Rotoiti Nos 6 & 7 blocks, plus 41a 1r 36p of the Tautara block.⁴⁴

⁴² Doc A82, Ibid p64

⁴³ Doc A82, Ibid p64

⁴⁴ Doc A82, Ibid p64

- 13.4.11 The 126 acre “Hongi’s Track” scenic reserve was acquired by the Crown in June 1911.
- 13.4.12 In November of 1911 some 82 acres of the Taumanu block and 29 of Rotoma were acquired, with compensation being determined by the Native Land Court in July of 1912.⁴⁵ The Scenic Reserve status of a portion of this land was revoked by the Crown in 1926 and subsequently sold, then sub divided for housing and is currently the only general freehold land in the area.
- 13.4.13 By 1912, driven by concerns over the amount of land already alienated from Ngāti Pīkiao since the passing of the Native Lands Act 1909, the government paradoxically sought to alienate even more and create more scenic reserves.⁴⁶
- 13.4.14 A report by the Inspector of Scenic Reserves in 1912, and a Royal Commission on Forestry made similar recommendations regarding the establishment of scenic reserves in the area, advocated that “early steps be taken to acquire from the Native owners all the forested land (about 11,000 acres) bordering the Lakes Rotoiti, Rotoehu, Rotorua, Okataina, Rotokawau, Tikitapu and Rotokakahi.
- 13.4.15 The Royal Commission advocated that a further 11,000 acres of forest, bush, and scenic reserves (that were no longer required) in the Rotoiti and Rotoma Survey Districts be milled to fund the scenic preservation, which would then be opened up for settlement.⁴⁷
- 13.4.16 Māori were to be paid for the land taken from the profit the Crown would make from milling the timber on the land being acquired.
- 13.4.17 In September 1915, the Commissioner of Crown Lands had informed the Under-Secretary of Lands that six areas to the north-east of Lake Rotoma

⁴⁵ Doc A82, Ibid p64

⁴⁶ Doc A82, Ibid p65

⁴⁷ Doc A82, Ibid p65

had been declared Crown land, though only one block of 560 acres had been gazetted, which represented a mere 7% of the total taking.⁴⁸

13.5 Forced Gifting and Blackmails

13.5.1 Local surveyor, H. Tai Mitchell was actively encouraged to keep the Chief Surveyor informed of prospective dealings on lands in the Te Arawa vicinity that would affect Crown interests, which he did so, specifically with regards to the Okataina Block.⁴⁹

13.5.2 The Chief Surveyor then notified the Under-Secretary for Lands about the activities of the 'syndicates' who were negotiating for the Okataina Block, who recommended that a proclamation under Section 363 of the Native Land Act, 1909, be issued over the affected blocks which empowered the government to prohibit private alienations up to a period of 1 year..⁵⁰

13.5.3 In November 1915, the Chief Surveyor recommended that a proclamation be issued prohibiting alienations over 31,730 acres of the Te Taheke, Rotoiti and Okataina blocks.⁵¹

13.5.4 One month later the Okataina Blocks were proclaimed as scenic reserves, and six years later, 506 acres of the Rotoiti Blocks were also declared.⁵²

13.5.5 In 1916, a further proclamation was issued restricting private alienations with respect to specific portions of seven blocks around Lake Rotoiti, which covered almost all of the northern shore of the lake from Taheke-Papakainga block east to the Rotoiti Native Township, plus a portion of the south-western shore, because they were required for scenic purposes.⁵³

⁴⁸ Doc A82, Ibid p66

⁴⁹ Doc A82, Ibid p66

⁵⁰ Doc A82, Ibid p66

⁵¹ Doc A82, Ibid p66

⁵² Doc A82, Ibid p68

⁵³ Doc A82, Ibid p70

- 13.5.6 The owners of Okataina made it known that they were “very upset” about the restrictions being imposed on private dealings. They were not consulted in any respect about the proclamations over Okataina and were only made aware when they tried to execute a lease.⁵⁴
- 13.5.7 The Native Minister, William Herries, was telegraphed, requesting that the restrictions be withdrawn to enable the owners to complete a lease of 11,000 acres “to practical farmers who are under covenant [to] spend a large amount improving [the] blocks”. The owners were afraid that the lessees would withdraw from the agreement because of the Crown’s proclamation. They concluded: “Surely you will not block this settlement of [a] large area on good terms to good people”.⁵⁵
- 13.5.8 In support, the President of the Waiariki District Māori Land Board, Judge Browne, informed the Under-Secretary to the Native Department that the lease agreement was on very favourable terms and that it was “practically completed pending the settlement of a dispute as to whether the Government Valuer had or had not valued the wrong block”.⁵⁶
- 13.5.9 Though the Government removed the general restrictions against private alienation from the whole of the Okataina blocks in 1916, substituting a much smaller area, the area acquired by the Crown contained a number of wahi tapu. This was of great concern to tangata whenua who given the Crown’s poor record in maintaining their protection.⁵⁷
- 13.5.10 By 1916, lake land around Rotoiti was being successfully developed by tangata whenua largely as a result of leases. Such development usually precluded the ability of the Crown to acquire land for scenic preservation as the entailed the clearing of bush and scrub and the establishment of

⁵⁴ Doc A82, Ibid pp70, 76

⁵⁵ Doc A82, Ibid p70

⁵⁶ Doc A82, Ibid p70

⁵⁷ Doc A82, Ibid pp72-73

English-style pasture, removing the scenery, and also, because the improvements priced the land out of the Government's reach.⁵⁸

13.5.11 In 1917, the Chief Surveyor recommended that Ngati Pikiaio should gift the lake edges to the Crown, notwithstanding the recognition that they would also be gifting any riparian rights that they held.⁵⁹

13.5.12 Although the land was valued at no less than 45/- acre after development, the Chief Surveyor recommended that the Maori owners be paid no less than 10/- per acre for their land.⁶⁰

13.5.13 These government valuations were later found to be grossly underestimated as lake edge properties were actually valued between 2 and 3 pounds per acre by one surveyor and between 5 and 14 pounds per acre by another.⁶¹

13.5.14 The Stout Ngata Commission noted the lands located around Lakes Rotoiti, Rotoehu and Rotoma which were owned primarily by Ngati Pikiaio were thought to be the most valuable in Rotorua.⁶²

13.5.15 By the end of 1917, the Government determined that the total area to be acquired came to 7,727 acres, which had an estimated value of £9,660, or an average of £1. 5/- per acre.⁶³

13.5.16 Attempts to negotiate this deal were abandoned when tangata whenua raised the question of lake ownership.

13.5.17 Section 363 of the Native Land Act only empowered the Crown to prohibit private alienations for a period of one year for blocks that it was negotiating to purchase, and tensions rose as the government continued to roll over the term of restriction on the land, which was eventually extended

⁵⁸ Doc A82, Ibid p74

⁵⁹ Doc A82, Ibid p74

⁶⁰ Doc A82, Ibid p76

⁶¹ Doc A82, Ibid pp76-77

⁶² Young et al, "Rotorua Twentieth Century Overview" Doc A79, p61

⁶³ McBurney "Scenery Preservation & Public Works Takings" Doc A82, p79

to 1920 (some 4 years since the original proclamation) given that no attempts to acquire the land were being made by the Crown.⁶⁴

13.5.18 With the help of Gilbert Mair, Ngati Pikiao complained about the acquisition of the whole frontage of their beautiful lake to the Minister for Scenery Preservation that they felt threatened by the Scenery Preservation Acts, which were to be used against them as an engine of oppression.⁶⁵

13.5.19 The Minister was informed of the Ngati Pikiao perception that:⁶⁶

- i The acquisition would disenfranchise Ngati Pikiao from places of immense intrinsic value, including the houses from where they originated;
- ii The acquisition would depreciate the rest of their lands significantly; and
- iii That attempts to obtain justice by Ngati Pikiao would be swamped in the onslaught of Crown bureaucracy and that such bureaucracy was racially discriminatory;

13.5.20 Gilbert Mair went on to convey to the Minister Ngati Pikiao's desire to negotiate and come to some sort of compromise with the government, stating in writing that:⁶⁷

Our whole administration of The Scenery Preservation Acts has been unnecessarily harsh and offensive from its very inception. Had the owners been met in a friendly and straightforward manner, I believe that in nine cases out of ten they would have waived all right to compensation. But as to the present procedure, they compare it to "the coming of a thief in the night".

⁶⁴ Doc A82, Ibid p80

⁶⁵ Doc A82, Ibid p80

⁶⁶ Doc A82, Ibid pp80-81

⁶⁷ Doc A82, Ibid pp80-81

- 13.5.21 The Commissioner of State Forests replied to such requests diminishing the intrinsic connections of Ngati Pikiāo to their whenua to one of mere economic enrichment as Ngati Pikiāo's interests in their own lands were balanced against those of the nation,⁶⁸ many of whom had never set foot on the land itself.
- 13.5.22 Te Morehu Kirikau, Wirihana Tamati, Taiatina and Wiremu Ereakara were initially put forward to represent the Rotoiti owners and to meet with government officials on issues of Scenery Preservation. For four months there was no response from the government who in the meantime approved three Pakeha applications to have their land exempted from the legislation.⁶⁹
- 13.5.23 When the Commissioner of State Forests and Minister in Charge of Scenery Preservation, finally met with representatives of Ngāti Pikiāo at Okere, Ngāti Pikiāo were represented by Morehu te Kirikau, Wirehunga Tamati, Wirihana Tamati, Teiri te Tikao, Paharuhi Pururu and Captain Vercoe, with Captain Gilbert Mair acting as interpreter.⁷⁰
- 13.5.24 Morehu informed the Minister that Ngati Pikiāo had decided to agree to the government's requirements provided that not too much land was taken. He also expressed Ngati Pikiāo's request for one or two of their number to be included on the Board of Control to ensure that the tangata whenua would maintain their voice in important matters. The Minister agreed to the conditions outlined by Morehu.⁷¹
- 13.5.25 Given the way that the Government sought to under-value land that it was to acquire, the Pikiāo negotiators deemed it more prudent to ensure ongoing control of their lands and waived compensation to ensure this.⁷²

⁶⁸ Doc A82, Ibid p81

⁶⁹ Doc A82, Ibid p81

⁷⁰ Doc A82, Ibid p84

⁷¹ Doc A82, Ibid p84

⁷² Doc A82, Ibid p92

- 13.5.26 At the Ministers request, Morehu nominated Tieri Te Tikao, Wirihana Tamati, Wiremu Ereatara and himself to sit on the Board of Control, with Captain Vercoe's name being added subsequently.⁷³
- 13.5.27 Ngati Pikiao were then informed that the legislation which created a two chain inalienable strip would only apply to Maori and Europeans who had by that time acquired rights, would be exempt.⁷⁴
- 13.5.28 This proposition was rejected by Ngati Pikiao who sought to ensure retention of their kainga, cultivations and sources of firewood. Morehu re-emphasised the Pikiao position that the government could not be trusted to take care of their urupa.⁷⁵
- 13.5.29 Parliament enacted the Native Land Amendment and Native Land Claims Adjustment Act 1919, which contained the necessary statutory provisions under which the areas of land to be ceded to the Crown by natives will be created scenic reserves under the provisions of the Scenery Preservation Act, 1908. This provided that:⁷⁶
- i The land to be ceded would "be decided by the Native owners or their representatives", and then surveyed at the Crown's expense.
 - ii The lands would be vested in trust in the Crown, and "held in perpetuity in trust as scenic reserves".
 - iii The former Native owners would "have at all times free right of access to any ancestral burial-grounds that may be included therein, and shall also have the right to bury deceased Natives in any such burial-grounds"
 - iv The reserves were to be administered by a special Board of Control consisting of not less than six members, "of whom five shall be members of the Ngati Pikiao Tribe

⁷³ Doc A82, Ibid p84

⁷⁴ Doc A82, Ibid pp85-86

⁷⁵ Doc A82, Ibid pp85-86

⁷⁶ Doc A82, Ibid pp88-89

- 13.5.30 On the 29th January, 1921, Morehu formally handed over the lands Morehu te Kirikau formally handed over the lands, at the same time stressing the condition that “Europeans were not to be appointed to look after the reserves” and that Ngati Pikiāo was to maintain control of the three hot springs on the lake.⁷⁷
- 13.5.31 After extolling “the magnificence of [the] gift” the Minister gave his personal assurance that there would never be any interference with the arrangement arrived at between Ngāti Pikiāo and the Government. He was “very pleased indeed” that a committee of Ngāti Pikiāo men had been appointed to carry out the conditions of the agreement, adding: “Into their hands we shall with the fullest confidence commit the care and preservation of these beautiful reserves”.⁷⁸
- 13.5.32 What the Crown termed a “magnificent gift”, was in actuality “more of a counter-offer than a straightforward gift”, calculated by Pikiāo Rangatira to minimise the effect the takings would have on their settlements and cultivations, and also to ensure continued access and use-rights to their urupā.⁷⁹
- 13.5.33 In April 1921, 1,035a 3r 18p of Rotoiti land were officially proclaimed as Scenic Reserves from blocks which comprised 21,610a 3r 18p in total.⁸⁰
- 13.5.34 This 1,035a 3r 18p was however taken out of the mere 3,600 acres that remained in Maori hands.⁸¹
- 13.5.35 The amount of land *given up* for reserves by Ngati Pikiāo represented almost one third
- 13.5.36 Tarawhai and Rongomai, who found themselves in a similar position of coercion, offered to *gift* lands at Okataina and Waione under the same conditions as those negotiated by Morehu for Pikiāo.⁸²

⁷⁷ Doc A82, Ibid p89

⁷⁸ Doc A82, Ibid p89

⁷⁹ Doc A82, Ibid p94

⁸⁰ Doc A82, Ibid p92

⁸¹ Doc A82, Ibid p92

- 13.5.37 The Crown followed up on these offers, including provisions for taking the Okataina lands in The Native lands Amendment and Native Claims Adjustment Act 1921, which essentially copied section 33 of the 1919 legislation that had provided for the taking of the Rotoiti scenic reserves, except that the committee would be made up of Ngāti Tarāwhai members.⁸³
- 13.5.38 The price paid by tangata to maintain some control of their whenua at Okataina was the loss of compensation for the land and the large quantities of valuable rimu and tōtara timber on it.⁸⁴
- 13.5.39 This action denied the multiple connections that flowed into the Okataina region redefining the tribal landscape and invisibilising the Rangiuuora presence.
- 13.5.40 In 1931, 162a-3r-19p of land at Waione and 2970a-3r-33p at Okataina were proclaimed Scenic Reserves.⁸⁵

13.6 Rotoiti Scenic Reserves Board

- 13.6.1 At its commencement the board resolved to:⁸⁶
- i respectfully seek power to destroy the animals that wantonly root and desecrate burial grounds parts and parcels of the Reserves, as well as authority to sue the owners for the damage done and damages generally; and
 - ii strongly recommended that the whole reserves be properly and securely fenced, as early as possible to obviate the damage incurred on the Reserves by straying cattle
- 13.6.2 The Board in realization of the costs upon such an undertaking requested the financial assistance of the Department.⁸⁷

⁸² Doc A82, Ibid p95

⁸³ Doc A82, Ibid p96

⁸⁴ Doc A82, Ibid p97

⁸⁵ Doc A82, Ibid p96

⁸⁶ Doc A82, Ibid p103

- 13.6.3 At this time, the public were also complaining were also complaining of the neglect of the neglect of the scenic reserves at Rotoma, grumbling about cattle, horses and pigs are running at will through the reserves, and asserting that if no action is taken, the scenic reserves would soon be a thing of the past, as far as preservation of the natural features is concerned⁸⁸ ..
- 13.6.4 Public complaints laid the fault squarely at the feet of the Board, notwithstanding the fact that the complaints did not emerge regarding the donated lands⁸⁹.
- 13.6.5 Notwithstanding the weight of public complaint, the Boards initiatives were marginalized as they were informed that the regulations governing the Board empowered it to merely prohibit the trespass of stock, but did not authorise it to sue the owners for damages. Neither could the full extent of the reserve be fenced off, as it was too expensive, but if the Board would nominate a comparatively small but valuable part of the reserve, he would be pleased to consider an application to fence that off.⁹⁰
- 13.6.6 In October of 1921, Tereiwhati Vercoe reemphasized the absolute necessity to fence the most valuable of the Reserves at once as the stock belonging to those owning adjacent properties were doing a considerable lot of damage.⁹¹
- 13.6.7 The cost of the fencing of the more urgent ones was estimated to be roughly £150. Vercoe added that he hoped the Under-Secretary would treat the matter as urgent⁹²

⁸⁷ Doc A82, Ibid p103

⁸⁸ Doc A82, Ibid p101

⁸⁹ Doc A82, Ibid p101

⁹⁰ Doc A82, Ibid p103

⁹¹ Doc A82, Ibid p105

⁹² Doc A82, Ibid p105

13.6.8 When March of the following year arrived, and the government had still failed to act, members of the Board, together with a European leaseholder named Levin, met with R. J. Knight of the Department of Lands and Survey to complain about the damage being done to the reserves by visitors. All of the bush on the Reserve on one block had been destroyed.⁹³

13.6.9 Suggestions by Knight to empower the Board to appoint Honorary Rangers who could be paid on a commission basis was denied funding by the undersecretary, so the Board was forced to undertake to fund the venture itself.⁹⁴

13.6.10 In May 1922, the Board nominated nine rangers, including 2 Pakeha.⁹⁵

13.7 Broken Promises – The Rotoiti Township

13.7.1 In a 1935 petition, Ngāti Pīkiao claimed that as part of the Rotoiti Scenic Reserves Deal, the Crown promised that in view of the large areas of land that had been gifted, the Crown would not require any further lands from them without their consent.⁹⁶

13.7.2 Similar statements concerning such a promise made at a meeting of owners regarding a subdivision of the Waione C4 block in 1953.⁹⁷

13.7.3 In about 1922, the Government was still negotiating with Ngāti Pīkiao about the fate of land which had been taken under public works at the eastern end of Lake Rotoiti for a township which failed to materialize. The Crown now wished to redefine as a scenic reserve, and Ngāti Pīkiao sought to have the land returned, on the basis that it was no longer required for the purpose for which it was taken.⁹⁸

⁹³ Doc A82, Ibid pp105-106

⁹⁴ Doc A82, Ibid p106

⁹⁵ Doc A82, Ibid pp105-106

⁹⁶ Doc A82, Ibid p100, 124

⁹⁷ Doc A82, Ibid p95

⁹⁸ Doc A82, Ibid p95