

**OFFICIAL**

**Wai 2059, # 1.1.1(a)**  
**Wai 1040, #1.1.343(a)**

KEI MUA TE RŌPU WHAKAMANA I TE TIRITI  
BEFORE THE WAITANGI TRIBUNAL

WAI 1040  
Wai 2059

I TE TAKE O

IN THE MATTER OF

ME  
AND

I TE TAKE O

IN THE MATTER OF

ME  
AND

I TE TAKE O

TE TURE I TE TIRITI  
O WAITANGI 1975  
THE TREATY  
OF WAITANGI ACT  
1975

TE PAPARAHI O TE RAKI  
INQUIRY  
THE  
NORTHLAND INQUIRY

TĒTAHI KEREME O  
AMELIA  
BRODERICK ON  
BEHALF OF  
HERSELF AND ON  
BEHALF OF TE  
IHUTAI AND NGĀTI  
TORO HAPU

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KO TE PŪRONGO O TE KERĒME MO WAI 2059  
AMENDED STATEMENT OF CLAIM FOR WAI 2059

DATED 16TH JANUARY, 2012

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TIKA CHAMBERS  
BARRISTERS  
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Waitangi Tribunal

**16 Jan 2012**

Ministry of Justice  
WELLINGTON

**AMENDED STATEMENT OF CLAIM  
DATED 16TH JANUARY 2012**

**MĒNĀ KA PAI KI TE RŌPU WHAKAMANA I TE TIRITI  
MAY IT PLEASE THE TRIBUNAL**

**Preamble**

- [1] This claim amends the claim, Wai 2059.
- [2] The claim is about the Crown's acts and omissions in relation to the claimants, which led to prejudice in terms of the principles of the Treaty of Waitangi.
- [3] The particular allegation in this claim is that the Treaty of Waitangi established a partnership, and hence an imposition on the Crown of the absolute duty to actively protect tāonga (in this context Maori land). Yet the Crown failed to do so, wherefore the result was inter alia the material impoverishment and unjustified discrimination against the Māori claimants herein.

**The Claimants**

- [4] The claimant is Amelia Broderick who brings this claim on behalf of herself and on behalf of Ngāti Ihutai and Ngāti Toro Hapū.

## **The Claimant Area and Subject Matter**

### ***Area***

- [5] The general subject land area of this claim is the lands within the rohe of Hokianga and in particular that land known as the Waihou A7C Block, as well as:
- a) Waihou block, A7b2
  - b) Puketaua Block
  - c) Utukura Block(forest and waahi tapu)
  - d) Opononi (forestry)
  - e) Horeke (forestry)
  - f) Omapere (wahi tapu)
  - g) Maraeroa (wahi tapu)
  - h) Kohukohu (wahi tapu)
  - i) Motukiore (wahi tapu)

### ***Subject Matter***

- [6] Namely the following:
1. Public Works takings
  2. Maori Affairs Act 1953 and Administration Act 1952
  3. Wahi tapu and Koiwi

## **The Alleged Facts Relied Upon in Support of the Claim**

### ***Public Works Takings:***

- [7] The claimants were prejudiced by the Crown's failure to acknowledge and protect their ownership of ancestral lands, in particular of the Waihou Block.

- [8] Land was wrongfully taken from the claimant forebears and used for public roads.
- [9] The claimants say that there was no consultation with the owners regarding the location and the extent of tracts of lands taken for Public Works.
- [10] The quantum of land taken for Public Works was excessive and was in whole and in part not used for the purpose intended.
- [11] No effort was made to restore the land to its original ownership.
- [12] No recompense was paid for the purported public works.
- [13] Further, the Crown through successive rating legislation, empowered local authorities to levy rates on claimant land and the Māori Land Court to enforce charging orders on lands for non-payment of rates.
- [14] The ability for Māori land to be on sold as a result of unpaid rates was not removed with the Ratings Taxes Act 1988.
- [15] Wherefore, the prejudice suffered to the claimants resulted in the following:
- a) loss of their whanau hapū interests in ancestral land; and
  - b) The loss of traditional hapū systems of land tenure and management.
  - c) The alienation of claimants within their own ancestral lands.
  - d) The loss of access to and the use of ancestral lands and the violation of waahi tapu and taonga.

*Maori Affairs Act 1953 and Administration Act 1952*

- [16] The Crown claimed that multiply owned land Maori was uneconomical and sought to subjugate vast tracts of land from Maori.
- [17] In particular, the claimants allege that they have been prejudicially affected by Crown policy in relation to the Maori development administration schemes which were imposed on their ancestral lands at Waihou.
- [18] Under the development scheme the claimant forebears were not provided with sufficient participation in the management and or control over their ancestral lands.
- [19] Wherefore the claimants allege that Crown acts and policies contravene The Treaty of Waitangi, and resulted in the claimants being displaced from their ancestral lands.
- [20] As a result of the Crowns breaches the claimants forebears have suffered the following prejudices:
- a) The loss of whānau hapū systems of land tenure and management; and
  - b) The enforced and voluntary sale and purchase of shares by the Crown, and subsequent sale to non- owners ;and
  - c) The desecration of waahi tapu (sites of significance);and
  - d) Economic and social deprivation.

### *Waahi Tapu and Koiwi*

- [21] The Crown failed to actively protect waahi tapu and koiwi of the claimants including, but not limited to, Pa, Ana, urupā, awa, waterways and archeological sites of significance.
- [22] The claimants say that they maintain a strong connection to the waahi tapu, koiwi, awa and waterways contained in the land blocks.
- [23] Of primary importance are the tangible and intangible tāonga, the corpus of traditional knowledge and the claimant's physical and metaphysical relationship with the lands and environmental responsibility.
- [24] Further, lands that contained archeological sites of significance, such as urupā or waahi tapu, were not exempt from being taken by the Crown for Public works.
- [25] The Crown omitted to properly address the failings in the public works legislation which allowed for the violation of waahi tapu to take place.
- [26] Despite having knowledge of waahi tapu from the very earliest period of contact, the Crown made no attempt to protect waahi tapu.
- [27] Māori had a right to expect that waahi tapu in respect of their lands would be given appropriate protection, but this fundamental fiduciary duty under Article Two of The Treaty of Waitangi continues to be ignored.

### **The Claim: The Cause of Action**

- [28] The claimants say:

a) That their claim falls within one or more of the matters referred to in Section 6(1) of the Treaty of Waitangi Act 1975 namely

1. that they are Māori, and
2. they have been and continue to be or are likely to be prejudicially affected by the various ordinances, acts, regulations, orders, proclamations, notices and other laws and by the various policies, practices and omissions adopted by, or on behalf of the Crown, their agents or their successors; and

[29] That the aforesaid prejudices are inconsistent with the principles of The Treaty, namely by the Crown;

a) The Treaty of Waitangi established a partnership, and hence the imposition on the Crown of the duty to act reasonably and in good faith, yet the Crown failed to do so, wherefore the result was that the Crown purportedly acquired sovereignty over Aotearoa New Zealand on its own terms.

[30] The particulars of the Crown acts and omissions giving rise to the cause of action herein are as follows (ordinances followed by policy):

- i. Public Works Act 1908
- ii. Native Land Court Act 1894

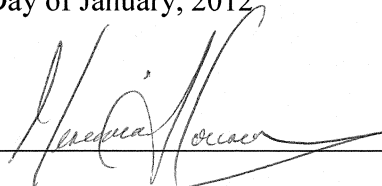
- iii. Native Land Claims Amendment and Native Claims Adjustment Act 1929
- iv. Native Land Amendment act 1936
- v. Maori Affairs Act 1953
- vi. Administration Act 1952
- vii. Maori Trust Boards Act 1955
- viii. Maori Purposes Act 1926-81
- ix. Maori Affairs Restructuring Act 1989.

### **Relief and Findings Sought**

[31] The claimants reserve their position regarding further amendments and detailed recommendations sought, but intend to file the same in an Amended Statement of Claim at an appropriate time or as directed by the Waitangi Tribunal. In the meantime the general recommendations sought are as follows:

- a) A finding of the facts in their favor; and
- b) A finding that their claim is well founded.

Dated this 16<sup>th</sup> Day of January, 2012



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Counsel Acting Tavake Barron Afeaki/Mireama Houra

For the Claimants

To: The Registrar of the Waitangi Tribunal

To: Counsel for the Crown – Te Paparahi O Te Raki Inquiry

To: Counsel for claimants – Te Paparahi O Te Raki Inquiry