OFFICIAL

Wai 898, #1.1.74
Wai 1113, # 1.1

KI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

MO TE TAKE O	Te Ture Tiriti o Waitangi 1975 (kua whakawhitia)
ME	
TE TAKE O	Te Rohe Potae
ME	
TE TAKE O	Te kereme na **MANIHERA WATSON FORBES** mo te iwi me nga hapu o Ngati Hikairo - Te Maori Mana Motuhake o Te Rohe Potae me te WhatiWhatihoe Marae.

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Waitangi Tribunal
27 Aug 2002
Ministry of Justice
WELLINGTON

TAPAETANGA O TE KEREME O NGATI HIKAIRO

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A. TE TURE – JURISDICTION

Te Kaitono

1. **THIS** Statement of Claim is lodged by Manihera Watson Forbes ("the Claimant") for and on behalf of himself and Ngati Hikairo, and for the benefit of the constituent hapu and marae of Ngati Hikairo to the extent that they choose to support this claim.

Te Kereme

2. **THE** claim identifies a number of breaches of the Treaty of Waitangi, its terms and principles, by the Crown that caused and continue to cause prejudice to the Claimant and Ngati Hikairo.

3. **THE** Claimant says that he, and Ngati Hikairo, 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, the particulars of which are set out in this Statement of Claim.

4. **THE** Claimant further claims 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.

5. **THE** Claimant acknowledges that other iwi claim and hold interests and associations within Te Rohe Potae and were party to Te Rohe Potae Sacred Compact (as described below in this Statement of Claim). For the avoidance of doubt, the Claimant does not purport to claim on behalf of the members of the Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa, and Whanganui hapu and marae and this claim does not affect any claims that those groups may have.

6. **THIS** claim may be known as the "Te Kereme mo Ngati Hikairo Mana Motuhake o Te Rohe Potae me te WhatiWhatihoe Marae".

B. TE KEREME - THE CLAIM

Te Kaitono me te Rohe Potae Rangatiratanga – The Claimant and Te Rohe Potae Sacred Compact, Customary Maori Leadership.

7. **THE** claim relates to the Crown's almost complete failure to protect and uphold Te Maori Mana Motuhake o Te Rohe Potae Sacred Compact, of which Ngati Hikairo is an iwi member.

8. **THE** Claimant alleges specific breaches by the Crown of the Treaty of Waitangi, including its terms and principles, and Te Rohe Potae Sacred Compact (described below).

9. **THE** particular Crown breaches of the Compact, and the principles of the Treaty of Waitangi, relate to:

   (a) a lack of recognition of tribal leadership and control;
   (b) the alienation of tribal lands;
   (c) the introduction of the Native Land Court;
   (d) the introduction of alcohol into Te Rohe Potae;
   (e) the imposition of the railway line through Te Rohe Potae;
   (f) public works takings; and
   (g) the destruction of the ancient marae of WhatiWhatihoe, the gateway to the heart of Te Rohe Potae and to the Kings in Ngaruawahia, Waikato.

10. **THE** Claim also focuses upon the Crown's failure to adequately ensure the members of Ngati Hikairo retained sufficient tribal lands for their reasonably foreseeable present and future needs.

11. **THE** Claimant says that Ngati Hikairo is or is 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, the principal claims of which are set out in this Statement of Claim.

12. **THE** Claimant further claims 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.

13. **THE** Claimant also alleges that the Crown, through such breaches of the Treaty of Waitangi, and also Te Rohe Potae Sacred Compact, has caused, and continues to cause, prejudice to the tribal members of Te Rohe Potae including Ngati Hikairo.

C. HISTORICAL BACKGROUND

Te Rohe Potae Rangatiratanga – The Sacred King Country Compact

14. **TE** Rohe Potae Sacred Compact ("the Compact") was a series of agreements entered into between various chiefs of the Ngati Maniapoto, Ngati Hikairo, Ngati Raukawa, Ngati Tuwharetoa, and Whanganui tribes and the Crown during 1882 and 1883.

15. **ACCORDINGLY,** the Compact included the iwi of Ngati Hikairo, and Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa, and Whanganui and the Crown and included the region known as Te Rohe Potae.

16. **TE** Rohe Potae, under the hat of King Tawhiao, was surrounded by a boundary to preserve peace and order called the "aukati".

17. **TE** Rohe Potae has provided, and provides, a spiritual life force to the members of Ngati Hikairo.

18. **NGATI HIKAIRO** has exercised tino rangatiratanga and mana whenua over its tribal lands before the advent of Te Rohe Potae and since time immemorial, and now consider Te Rohe Potae and the Compact as their new taonga tuku iho.

19. **NGATI HIKAIRO** has, since time immemorial, held, and continues to assert or hold, customary rights and interests in, and associations with, Te Rohe Potae. Such interests can practically be equated with the legal notion of ownership, although Ngati Hikairo belongs to the land (including the moana) as much as it belongs to them.

20. **NGATI HIKAIRO** has held, since time immemorial, and continues to hold responsibilities as tangata whenua and/or kaitiaki for the management and maintenance of the well being, both physically and spiritually, of Te Rohe

Potae lands, harbours, coastline, lakes, springs, rivers, streams, tributaries, resources, and all flora and fauna.

21. **NGATI HIKAIRO** has held before and after 1840, and continues to hold, interests and rights within the wider region of Te Rohe Potae.

22. **THE** Claimant acknowledges that other tribal groups, hapu, and marae also assert, claim, and hold interests and associations in Te Rohe Potae.

Te Rohe Potae Marae WhatiWhatihoe Te Tino Rangatiratanga o te Iwi – The King Country Compact Marae – WhatiWhatihoe, the sacred marae of King Tawhiao, Akerehanara, (Alexandria) now called Pirongia.

> *"Ko Akerehanara taku haone kaha, ko Kemureti taku oko horoi, ko Ngaruawahia taku Turangawaewae".*
>
> *King Tawhiao*

23. **TE** Rohe Potae included the marae WhatiWhatihoe of King Tawhiao, at Pirongia.

24. **THE** WhatiWhatihoe marae is of great significance to Ngati Hikairo.

25. **THE** marae WhatiWhatihoe was once the site of a thriving community of Ngati Hikairo and remnants of the Waikato, who were displaced by military occupation of their lands in the Waikato. The marae has provided in the past, a spiritual and a wholesome life to the members of Ngati Hikairo, and of hapu of other tribal groups.

26. **THE** former WhatiWhatihoe marae area of King Tawhiao, now forms the major part of a dairy farm and has a cowshed on the site of the pa. In contrast, at the site where the armed forces of the Crown built their redoubt, there is now a reserve and it is preserved as a national monument.

27. **NGATI HIKAIRO** has held before and after 1840, and continues to hold, interests and rights within the WhatiWhatihoe marae area and still considers the area sacred.

28. **NGATI HIKAIRO** has exercised tino rangatiratanga within the area of the WhatiWhatihoe marae since time immemorial.

29. **NGATI HIKAIRO** has held, since time immemorial, and continues to hold responsibilities, as tangata whenua and/or kaitiaki for the management and maintenance of the well being, both physically and spiritually, of the urupa and marae area of WhatiWhatihoe, but because of the actions of the Crown, can no longer practice such responsibilities.

30. **THE** Claimant acknowledges that certain other hapu claim interests, responsibilities, and have exercised tino rangatiratanga within the region of the WhatiWhatihoe marae.

D. NGA HARA O TE KARAUNA - CROWN TREATY BREACHES

Undermining tribal authority and alienation of lands

31. **THE** Crown breached the terms and spirit of Te Rohe Potae Sacred Compact and failed to adequately remedy such breaches as set out in this Statement of Claim. These breaches of the Compact are in turn breaches of the terms and principles of the Treaty of Waitangi.

32. **THE** Crown has failed to protect the rights and rangatiratanga of the tribes of Te Rohe Potae and the Compact under their customary leadership and governance.

33. **THE** Crown, in breach of the Compact and the terms and principles of the Treaty of Waitangi, while knowing of the desire of Ngati Hikairo to maintain their own autonomy and exercise rangatiratanga, proceeded to undermine and erode Ngati Hikairo authority by:

    (a) imposing, without proper consultation nor consent, an alien system of individualised land tenure;
    (b) removing, without consent, collective tribal custodianship over hapu lands and resources;
    (c) promoting and procuring the alienation of tribal and hapu lands and resources through various means;
    (d) diminishing the ability of tribal and hapu leaders to provide for the present and future needs of Ngati Hikairo and its hapu; and,
    (e) failing to consistently acknowledge and recognise the nature and extent of traditional Ngati Hikairo and hapu leadership.

34. **THE** Crown, in breach of the Compact and its duties of good faith and protection under the Treaty of Waitangi, facilitated the acquisition and promoted the alienation of Ngati Hikairo tribal lands.

35. **THE** Crown has failed to protect, provide for, respect, or recognise the exercise of the necessary customs to protect, respect, and keep in balance the customary social, and iwi structures of Ngati Hikairo in Te Rohe Potae.

36. **THE** Crown has, both directly or indirectly, caused, permitted or allowed the degradation of the spiritual, economical, and social health of Ngati Hikairo in Te Rohe Potae.

37. **THE** Crown has failed and/or refused to adequately remedy the degradation of the spiritual, economic, and social health of Ngati Hikairo in Te Rohe Potae.

38. **THE** Crown has failed to properly recognise, protect, and provide for the ownership of all the tribal lands of Ngati Hikairo within Te Rohe Potae.

39. **THE** Crown has failed to properly recognise, protect, and provide for Ngati Hikairo's ownership of its tribal materials and resources within Te Rohe Potae

40. **THE** Crown has failed to properly recognise, protect, and provide for the customary access of the members of Ngati Hikairo to their material and other resources within Te Rohe Potae.

41. **THE** Crown has through various statutes, policies, practices, and other instrumentalities, including in particular the Resource Management Act 1991, expropriated te tino rangatiratanga and management rights over Te Rohe Potae from the members of Ngati Hikairo and the other Te Rohe Potae tribal groups without their consent, and in doing so has failed to adequately provide for or recognise their collective role as kaitiaki over Te Rohe Potae.

Native Land Court

42. **THE** Crown has through various Native Land legislation, from the Native Lands Act 1865, caused and permitted the alienation, fragmentation and individualisation of communal tribal titles to the lands of Te Rohe Potae, without proper consultation or consent of Ngati Hikairo.

43. **THE** Crown, in breach of the Compact and its duties of good faith and active protection under the Treaty of Waitangi, failed and/or refused to properly implement the Compact by providing for Ngati Hikairo authority and control during investigations into internal tribal and hapu boundaries and interests.

44. **THROUGH** the imposition by the Crown of the Native Land Court process, Ngati Hikairo were forced to bear the significant costs involved in advancing claims through the Court and the Crown failed to identify and then ameliorate the resulting detrimental effects of such Court process.

Public Works takings

45. **THE** Crown has failed to protect the interests of the members of Ngati Hikairo by the compulsory taking of tribal land within Te Rohe Potae for roads, railway lines, reserves, and other 'public purposes'.

46. **THE** Crown's compulsory taking of Ngati Hikairo land by enacting legislation and without proper consultation is in breach of the Compact and the Treaty of Waitangi and its principles.

Destruction and Loss of WhatiWhatihoe Marae

47. **THE** Crown, in breach of the terms and principles of the Treaty of Waitangi, has failed to protect the WhatiWhatihoe marae, and the rights and rangatiratanga of the members of this tupuna marae of Ngati Hikairo and Te Rohe Potae, and failed to protect their customary governance and leadership in times of stress.

48. **THE** Crown has failed to protect, provide for, respect, or recognise the exercise of the necessary customs to protect, respect, and keep in balance the customary social and iwi structures of the members of WhatiWhatihoe marae.

49. **THE** Crown, in breach of the terms and principles of the Treaty of Waitangi and without consent of Ngati Hikairo, occupied by military force the WhatiWhatihoe marae.

50. **THE** Crown, in breach of the terms and principles of the Treaty of Waitangi, destroyed and sacked the WhatiWhatihoe marae and property was misappropriated and cultivations uplifted.

51. **THE** Crown, in breach of the terms and principles of the Treaty of Waitangi, expelled people of Ngati Hikairo and of certain other hapu from WhatiWhatihoe marae and the surrounding lands or caused them to flee.

52. **THE** Crown, in breach of the terms and principles of the Treaty of Waitangi, put the tribal lands of the WhatiWhatihoe marae into individual title.

53. **THE** Crown, in breach of the terms and principles of the Treaty of Waitangi, created an environment where a few individual title holders were effectively forced to alienate the tribal lands of WhatiWhatihoe to Europeans.

54. **THE** Crown, in breach of the terms and principles of the Treaty of Waitangi, failed to protect and provide for the continuing customary and legal access of the people of Ngati Hikairo to two urupa burial areas adjacent to the Whatiwhati marae area.

55. **THE** Crown has, directly or indirectly, caused, permitted or allowed the degradation of the spiritual, economic, and social health of the people of the WhatiWhatihoe marae and failed to preserve their urupa for their descendants.

E. TE MAMAE - THE PREJUDICE

56. **AS** a consequence of the Crown's legislation, its actions, omissions, practices and policies as set out in this Statement of Claim the Claimant and the members of Ngati Hikairo tribe have suffered and continue to suffer numerous prejudicial effects including:

(a) the loss of mana;

(b) the loss of, or impairment to, their management control and te tino rangatiratanga over Te Rohe Potae, and including the WhatiWhatihoe marae;

(c) the dispossession of substantially all of their cultural, spiritual, economic and political base;

(d) the loss of mana and the consequent loss of economic, cultural and political autonomy through the continuing erosion of rangatiratanga;

(e) the damage to and reduction of the ability to carry out their duties, obligations, and functions as kaitiaki;

(f) the loss of knowledge and understanding of their customs, tikanga, ture, kawa, reo Maori, traditions, whakapapa, role as kaitiaki, and customary practices relating to Te Rohe Potae and WhatiWhatihoe marae;

(g) the damage and reduction of their ability to properly host manuwhiri with provisions of mahinga kai, mahinga tuna and other material gifts from the resources within the WhatiWhatihoe marae area;

(h) the loss and destruction, both wholly and partly, of their wahi tapu;

(i) the loss of their economic interests in and rights to develop their lands and resources in Te Rohe Potae;

(j) the loss of their tribal lands within Te Rohe Potae and including the WhatiWhatihoe marae;

(k) the damage to and gradual destruction of the social structure and organisation of the iwi, hapu and whanau;

(l) the destruction of the traditional system of tenure;

(m) being left with fragmented, meager and individualised land holdings of little utility or value that are manifestly insufficient for the present and future needs of the hapu;

(n) being left with insufficient land and resources to actively participate in the economy and enjoy the benefits of European settlement;

(o) the damage to the natural environment of the hapu and all its abundance of natural resources caused by the pollution of the lands, waterways, sea and air;

(p) their experience of anxiety, hurt, stress and trouble; and,

(q) a gross offence to their customary right, title, mana, ihi and wehi.

57. **ACCORDINGLY** the members of the Ngati Hikairo tribe hold, and have held for over 140 years, a strong sense of grievance against the Crown.

58. **FURTHERMORE** the members of Ngati Hikairo hold, and have held for over 140 years, a perception that:

(a) The Crown has not acted in good faith, and;

(b) The Crown has not properly protected their customary rights and interests in, and associations with, Te Rohe Potae, and;

(c) The Crown has not properly protected their customary rights and interests in, and associations with, ancestral and traditional customary fishing grounds associated with Te Rohe Potae, and;

(d) The Crown has not kept to its solemn undertakings under the Treaty of Waitangi and Te Rohe Potae Sacred Compact.

F. TE UTU - THE RELIEF

59. **THE** Claimant seeks recommendations to remove, alleviate, or mitigate the prejudice inflicted upon and experienced by the members of the Ngati Hikairo iwi and accordingly requests recommendations from the Waitangi Tribunal that the Crown:

(a) Provides a full and comprehensive public apology for the actions and omissions regarding Te Rohe Potae Sacred Compact and the WhatiWhatihoe marae that were in breach of the articles and principles of the Treaty of Waitangi and the spirit of Te Rohe Potae Sacred Compact;

(b) Works with the Ngati Hikairo iwi to institute, monitor, and regulate a programme seeking the recovery of Ngati Hikairo tribal lands within Te Rohe Potae (including WhatiWhatihoe marae);

(c) Works with the Ngati Hikairo iwi to institute, monitor, and regulate a programme for the protection, growth, and recovery of the customary social structures of the tribes in Te Rohe Potae;

(d) Protects, in full, the customary rights of the members of Ngati Hikairo relating to the communal health and welfare systems of the tribes of Te Rohe Potae and associated traditional customary social structure protocols;

(e) Protects, in full, the customary rights of the members of Ngati Hikairo to gather, extract, or collect foods, rongoa, and all customary materials and resources of Te Rohe Potae;

(f) Returns all Ngati Hikairo tribal land owned by the Crown within Te Rohe Potae and any improvements thereon including reserved and conservation land to the members of Ngati Hikairo iwi;

(g) Pursuant to ss 8A-8H of the Treaty of Waitangi Act 1975, returns to Ngati Hikairo tribe any and all memorialised land, that is Ngati Hikairo tribal land, within in Te Rohe Potae region including:

(i) Lands held in Crown title, and;

(ii) Land held by any State Owned Enterprise, and;

(iii) Land held by any institution under the Education Act 1989, and;

(iv) Land vested under the New Zealand Railway Corporation Restructuring Act 1990 or any interest in any such land and together with improvements thereon;

(h) Pursuant to ss 8HA-8HH of the Treaty of Waitangi Act 1975, returns to the Ngati Hikairo iwi any and all Crown Forest land, that is Ngati Hikairo tribal land, in Te Rohe Potae and the payment of compensation under the Crown Forest Assets Act 1989;

(i) Enacts legislation to recognise and provide for the ownership by the Ngati Hikairo iwi of their tribal lands within Te Rohe Potae, including its waters;

(j) Compensates the Ngati Hikairo iwi for the prejudicial effects as a result of the Crown's legislation, acts, omissions, policies and practices as identified in this Statement of Claim;

(k) Makes provision for the participation of representatives of the Ngati Hikairo iwi, and other Te Rohe Potae tribes, on all statutory boards, local and regional authorities, authorities, agencies, companies and

other Crown and quasi-Crown organisations, Government bodies, agencies, and departments that function within, or with regard to, Te Rohe Potae including its fisheries and other resources;

(l) Provides statutory, regulatory and other appropriate mechanisms and resources to enable tribal self-regulation, management, and governance for the Ngati Hikairo iwi within Te Rohe Potae and over tribal resources in Te Rohe Potae;

(m) Pays the full costs of the Claimant and Ngati Hikairo for the preparation and presentation of this claim and the costs of recovering any land recommended to be returned or other costs incurred in securing the implementation of Tribunal recommendations;

(n) Any further relief the Tribunal deems appropriate.

60. **THE** Claimant seeks the leave of the Tribunal to amend this Statement of Claim in the light of further research, evidence and submissions.

SIGNED by the Claimant, **MANIHERA WATSON FORBES** for and on behalf of himself and **NGATI HIKAIRO**

AND FOR the benefit of the hapu, marae, and all members of **NGATI HIKAIRO**.

DATED this 16th day of August 2002 in Te Rohe Potae.

Manihera Forbes

MANIHERA WATSON FORBES

AND SIGNED with the support of the Executive Members of **TE RUNANGANUI O NGATI HIKAIRO**

MANAOTERANGI ERNEST FORBES

This Statement of Claim is filed by LAYNE ROSS HARVEY, solicitor for the Claimant, of the firm of Walters Williams & Co.

The address for service on the Claimant is at the offices of Walters Williams & Co, Solicitors, Level 1, Windsor Court, 128-136 Parnell Road, Parnell, Auckland.

Documents for service on the Claimant may be left at the address for service or may be:

(a) Posted to the solicitor at Walters Williams & Co, PO Box 37 661, Parnell, Auckland; or

(b) Left for the solicitor at a document exchange for direction to Walters Williams & Co, DX CP 31 534, Auckland; or

(c) Transmitted to the solicitor by facsimile to Facsimile No. (09) 307 4301.