

**IN THE WAITANGI TRIBUNAL**

**Wai 1500**

**IN THE MATTER OF**                      The Treaty of Waitangi Act 1975

**AND**

**IN THE MATTER OF**                      Te Rohe Potae Inquiry

**AND**

**IN THE MATTER OF**                      a claim by **John Hone Arama  
Tata Henry** and **Duane  
Tamaenuku Tata Henry** as co-  
claimants on behalf of themselves,  
and on behalf of the Tuarau Te  
Tata Henare Whanau.

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**AMENDED STATEMENT OF CLAIM**

**Date: 9 December 2011**

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**TamakiLegal**  
Barristers & Solicitors

55 East Tamaki Road, Papatoetoe, Auckland  
PO Box 259-280, Botany, Manukau 2163  
P. 09 252 0194  
F. 09 279 2118

Counsel Acting: Darrell Naden and Emma Whiley

<b>RECEIVED</b> Waitangi Tribunal
<b>9 Dec 2011</b>
Ministry of Justice WELLINGTON

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## MAY IT PLEASE THE TRIBUNAL

### INTRODUCTION

1. This amended Statement of Claim is lodged by JOHN HONE ARAMA TATA HENRY and DUANE TAMAUENUKU TATA HENRY on behalf of themselves and the Tuarau Te Tata Henare Whanau (“the Claimants”)
2. The Claimants’ whakapapa has been recorded and filed on the Record of Inquiry by Mr John Kaati.<sup>1</sup>
3. The Claimants descend from the Paramount Chief Reihana Wahanui. Wahanui married Ripeka Te Wairingiringi and had no children of their own. They were given a child as whangai (who was the son of Ripeka Te Wairingiringi’s sister, Panipiata), by the name of Tuarau Te Tata Henare. Tuarau Te Tata Henare married Pareteuenga (Reopiki). They had a son Haupokia Te Tata. Haupokia Te Tata married Ngataua Titi and they had a son, John Hone Arama Tata Henry (the Claimant), who in turn had a son, Duane Tamauenuku Tata Henry (the Co-claimant).
4. The Claimants’ hapū are Ngāti Ngutu, Ngāti Ngutungā, Ngāti Urunumia, Ngāti Toa, Ngāti Tuwharetoa, Ngāti Te Puta, Ngāti Hikairo, Ngāti Mahuta and Ngāti Apakura.

#### *The Claim*

5. The Claimants say that their claim falls within the matters referred to in section 6(1) of the Treaty of Waitangi Act 1975 namely:
  - a. that they are Māori; and
  - b. they have been and continue to be or are likely to be prejudicially affected by the various Acts and Crown policies, practices, acts and omissions adopted by, or on behalf of the Crown or its agents.
6. The Claimants say they have been, are, or are likely to be prejudicially affected by the acts or omissions of the Crown, as further set out below.

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<sup>1</sup> WAI 898 ROI # C7 and C8 “*Rohe Potae and Wahanui, Paramount Chief*”

## FIRST CAUSE OF ACTION – THE LOSS AND DESECRATION OF WĀHI TAPU/TAONGA

### Breach

7. In breach of the Treaty principles of active protection, good faith and in breach of the affirmation of tino rangatiratanga contained in Article II of te Tiriti o Waitangi, the Crown has failed to actively protect the Claimants' wāhi tapu from desecration and destruction.
8. The Claimants adopt the Tikanga Generic Pleadings filed in the Tribunal.

### Particulars

9. In 1840, Te Rohe Potae Māori exercised tino rangatiratanga over the environment and wāhi tapu/taonga within their rohe.
10. The relationship between the Claimants and their land, especially wāhi tapu, is one of whakapapa and ancestral relationships between the people of the present and those of the past.
11. Following the signing of te Tiriti, English common law was imposed upon Māori in place of Māori customary law.<sup>2</sup>
12. This drove dramatic environmental changes within Te Rohe Potae.<sup>3</sup>
13. Despite having knowledge of wāhi tapu from the very earliest period of contact, the Crown made no attempt to protect wāhi tapu.

### *Lack of Statutory Recognition*

14. Māori had a right to expect that wāhi tapu on alienated land would be given appropriate protection, but this Treaty based duty was ignored until the late 1980s.<sup>4</sup>
15. It took 25 years from the passing of the Historic Places Act 1954 for wāhi tapu to receive statutory recognition and 40 years for the Māori Heritage Council to be established.<sup>5</sup>

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<sup>2</sup> Belgrave et al WAI 898 ROI # A64 p 18

<sup>3</sup> Belgrave et al WAI 898 ROI # A64 p 18

<sup>4</sup> Armstrong et al WAI 1040 ROI # A12 p 3

16. Prior to the Historic Places Amendment Act 1975 coming into effect, which for the first time gave protection to both Māori and European archaeological sites within New Zealand, the Claimants and their forebears' wāhi tapu had suffered desecration over many years.
17. Claimant lands taken via the public works legislation often had wāhi tapu on it or associated with it but these special features were seldom taken into account when the lands were taken.
18. The Crown failed to address the defects in the public works legislation that allowed the violation of wāhi tapu to take place.<sup>6</sup>
19. Public works legislation failed to recognise Māori heritage.

*Loss of Wāhi Tapu through the Diversion of the Waipa River*

20. From the mid-1800s successive governments pursued a policy whereby the rights of Māori in regards to waterways were gradually displaced in favour of the Crown's rights to such resources.<sup>7</sup>
21. English Common law presumptions were asserted insofar as they could be relied upon to secure rights for the Crown.<sup>8</sup>
22. If these presumptions could not achieve this objective, common law was modified by legislative intervention.<sup>9</sup>
23. Various Acts were passed by the Crown to secure control, and in many cases the ownership, of New Zealand's waterways.<sup>10</sup>
24. Since 1840, the Crown has asserted management and control over the Rohe Potae environment, including the Waipa River.<sup>11</sup>

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<sup>5</sup> Janet Davidson, "*Wahi Tapu and Portable Taonga of Ngāti Hinewaka: Desecration and Loss; Protection and Management*", a report prepared for the Ngāti Hinewaka Claims Committee, February 2003, p6-8

<sup>6</sup> As found by the Waitangi Tribunal in the Manukau Report (Wai 8) and the Te Roroa Report (Wai 38)

<sup>7</sup> White WAI 1200 ROI # A55 p8

<sup>8</sup> White WAI 1200 ROI # A55 p1

<sup>9</sup> White WAI 1200 ROI # A55 p1

<sup>10</sup> See The Salmon and Trout Act 1867, Timber Floating Act 1873, The Counties Act 1883, The River Boards Act 1884, The Railways Construction Act 1884, The Fisheries Act 1884, The Counties Act 1886, The Public Works Act 1889, The Water Supply Act 1891, The Land Drainage Act 1893, The White Bait Fisheries Regulations 1894, The Wildlife Act 1903 and several other Statutes enacted by the Crown

25. The Crown enacted the River Boards Act in 1884 and the Land Drainage Act in 1893 which devolved power to ratepayer boards within local government.<sup>12</sup>
26. The above Acts also enabled the Crown to acquire ownerships of lands for large-scale drainage operations.<sup>13</sup>
27. Māori were usually excluded from local government processes as ratepayer status was reserved for trustees of Māori landowner trusts and only when rate payments were up to date.<sup>14</sup>
28. In 1956 the Crown enacted the Waikato Valley Authority (“WVA”).<sup>15</sup>
29. The WVA was established in order to address flooding that had been a problem in the Waikato region due to settlement in and around the river.<sup>16</sup>
30. The WVA was made up of various local and central government representatives.<sup>17</sup>
31. The WVA Act created a special catchment board for the Waikato region, consisting of all the land of the Waikato catchment, an area that stretched from Tongariro in the South to Pukekohe in the north.<sup>18</sup>
32. The WVA implemented schemes involving major earthworks around Te Kuiti and Otorohanga.<sup>19</sup>
33. The WVA scheme in and around Otorohanga was approved by central Government in October 1960 (“the Scheme”).<sup>20</sup>
34. In December that same year, 120 residents unanimously approved the Scheme at a meeting of the Otorohanga Borough Council.<sup>21</sup>

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<sup>11</sup> *White Inland Waterways* WAI 1200 ROI # A55 p1

<sup>12</sup> Belgrave et al WAI 898 ROI # A64 p61

<sup>13</sup> Belgrave et al WAI 898 ROI # A64 p67

<sup>14</sup> Belgrave et al WAI 898 ROI # A64 p61

<sup>15</sup> Waikato Valley Authority Act 1956

<sup>16</sup> Belgrave et al WAI 898 ROI # A64 p32

<sup>17</sup> Belgrave et al WAI 898 ROI # A64 p32

<sup>18</sup> Belgrave et al WAI 898 ROI # A64 p33

<sup>19</sup> Belgrave et al WAI 898 ROI # A64 p117

<sup>20</sup> Belgrave et al WAI 898 ROI # A64 p117

<sup>21</sup> Belgrave et al WAI 898 ROI # A64 p118

35. Work on the Scheme began in 1961.<sup>22</sup>
36. The Scheme involved major changes to the course of the Waipa river and large scale changes to the flood banks.<sup>23</sup>
37. The Scheme was completed under the powers of entry through the Public Works Act 1928.<sup>24</sup>
38. At Otorohanga, the course of the river was moderated, moving it away from Rangiatea Street and 60 meters away from the railway station.<sup>25</sup>
39. Bends were removed giving the river more direct route through the southern limits of the township.<sup>26</sup>
40. Substantial stop banks were built up around the new river course.<sup>27</sup>

#### *Lack of Māori Consultation*

41. Māori were not consulted nor were their needs or values considered during the planning or implementation of the Scheme.<sup>28</sup>
42. The Public Works Act 1928 only allowed for a limited range of land uses to be deemed important enough to trigger a ministerial approval of the taking.<sup>29</sup>
43. The Public Works Act 1928 failed to take account of Māori uses of land and sights of extreme cultural and spiritual importance.<sup>30</sup>
44. Some requests for information about Māori sites were made, particularly regarding urupa.<sup>31</sup>
45. In September 1964 N. McLeod, the District Commissioner of Works, wrote to the resident engineer at Te Kuiti requesting:

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<sup>22</sup> Belgrave et al WAI 898 ROI # A64 p118

<sup>23</sup> Belgrave et al WAI 898 ROI # A64 p117

<sup>24</sup> Belgrave et al WAI 898 ROI #A76 p201

<sup>25</sup> Belgrave et al WAI 898 ROI # A64 p118

<sup>26</sup> Belgrave et al WAI 898 ROI # A64 p118

<sup>27</sup> Belgrave et al WAI 898 ROI # A64 p117

<sup>28</sup> Belgrave et al WAI 898 ROI #A76 p203

<sup>29</sup> Belgrave et al WAI 898 ROI #A76 p213

<sup>30</sup> Belgrave et al WAI 898 ROI #A76 p213

<sup>31</sup> Belgrave et al WAI 898 ROI #A76 p207

... a report hereon for the Minister's information, stating whether you know of an objection to the taking of land for the purposes mentioned, and particularly whether there are any buildings, yards, gardens, orchards, vineyards, ornamental parks, pleasure-grounds, or burial grounds proposed to be taken. [Original emphasis].<sup>32</sup>

46. Resident engineer, T. Thompson replied on 5 November 1964 stating there no such objections or features on the land considered significant under the Public Works Act 1928.<sup>33</sup>

47. A typical response from Thompson and one akin to that sent on 5 November 1964 is as follows:

The land proposed to be taken for flood protection works and land for street as shown on S.O.42617 has been inspected. There is no known objection to the taking of the land, there being no buildings, yards, gardens, orchards, vineyards, ornamental parks, pleasure grounds occupying the land proposed to be taken.<sup>34</sup>

48. Further requests for information on different lands for the Scheme were made in February 1965. Thompson replied that there were no such objections or features to those lands either.<sup>35</sup>

49. Improper planning and consultation procedure led to incorrect information being provided to planners and the subsequent desecration of the Claimants' Wāhi Tapu.<sup>36</sup>

#### *The Sandstone Rock*

50. Before the introduction of the Scheme, a sandstone rock sat on the riverbank where the Mangawhero previously met the Waipa within the Orahiri 1 block ("the sandstone rock").<sup>37</sup>

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<sup>32</sup> Belgrave et al WAI 898 ROI #A76 p207

<sup>33</sup> Belgrave et al WAI 898 ROI # A64 p119

<sup>34</sup> Belgrave et al WAI 898 ROI #A76 p208

<sup>35</sup> Belgrave et al WAI 898 ROI # A64 p119 and p120

<sup>36</sup> Belgrave et al WAI 898 ROI #A76 p207

<sup>37</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p206

51. The sandstone rock was approximately 4 metres by 8 metres and was half submerged in the river.<sup>38</sup>
52. The sandstone rock is of significant historical importance to the Claimants due to its role in the 1822 battle between Nga Puhi and Maniapoto.<sup>39</sup>
53. The sandstone rock contained a small underwater cave with an air pocket of which was used by a Waikato woman being held captive by Nga Puhi chief Huiputea to hide and escape.<sup>40</sup>
54. The sandstone rock allowed the woman to find and alert Te Wherowhero of Maniapoto about other women being held captive at the Nga Puhi winter base at Orahiri, just south of Otorohanga.<sup>41</sup>
55. Te Wherowhero then asked the woman to return to Huiputea's camp to organise the other captive women so they could distract the Nga Puhi men while Te Wherowhero's men attacked.<sup>42</sup>
56. This led to the subsequent Waikato-Ngāti Maniapoto victory over Nga Puhi.<sup>43</sup>
57. Following the implementation of the Scheme, particularly the diversion of the Waipa river and subsequent stop banks constructed alongside the new course of the river, the sandstone rock has suffered significant degradation and can no longer be located.<sup>44</sup>

#### *The Kaariki Urupa*

58. The Kaariki urupa is located in and around Orahiri 1 Sec 20 ("the urupa").
59. The boundaries of Orahiri 1 Sec 20 do not correctly outline the position and extent of the urupa.<sup>45</sup>
60. Many of the Claimants' tūpuna are buried at the urupa.

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<sup>38</sup> Claimant Evidence

<sup>39</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p206

<sup>40</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p206

<sup>41</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p206

<sup>42</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p206

<sup>43</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p206

<sup>44</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p206

<sup>45</sup> Claimant Evidence

61. During the early 1960s, work began on the Scheme in and around the urupa.<sup>46</sup>
62. Land was taken from the side of the hill of which the urupa is located.<sup>47</sup>
63. The WVA were made aware of the proximity of their works to the urupa on two occasions;
  - a. Upon one of the contract workers noticing that the textures of the soil being excavated were similar to soil found at a graveyard and notified the WVA as such; and<sup>48</sup>
  - b. when the Claimants directly notified the Council about the urupa and warned of the inconsistencies with the fence line of the urupa and the boundaries of the Orihiri block.<sup>49</sup>
64. On both occasions the Council ignored such warnings.<sup>50</sup>
65. The work consequently disrupted and desecrated grave sites from the urupa.<sup>51</sup>

### **Prejudice**

66. As result of the Crown's actions and omissions, the Claimants have suffered following prejudice:
  - a. the loss and desecration of sites of significance and wāhi tapu; and
  - b. a consequent loss of mana.

## **SECOND CAUSE OF ACTION – PUBLIC WORKS**

### **Breach**

67. The Crown, in breach of its duty to actively protect Māori rangatiratanga and lands in Te Rohe Potae, introduced and operated a public works legislative regime that

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<sup>46</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p215

<sup>47</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p215

<sup>48</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p215

<sup>49</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p215

<sup>50</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p202

<sup>51</sup> Claimant Evidence as recorded in Belgrave et al WAI 898 ROI #A76 p215

facilitated the compulsory acquisition of Māori land in circumstances where:

- a. Compensation was either non-existent or inequitably low;
- b. Inadequate notice, if any, was given prior to lands being taken;
- c. The amount of land compulsorily acquired was excessive; and
- d. Lands taken in excess of need were not offered for return.

68. The Claimants adopt the Public Works Takings Generic Pleadings filed in the Tribunal.

### **Particulars**

#### *Taharoa A Native School*

69. On 22 February 1900, the Inspector of Native Schools acquired a statutory declaration from 'principal Māoris (sic) of the district' to the effect that they agreed to gift four acres of land for the purposes of a Native School site.<sup>52</sup>
70. A request was then made to the Public Works Department under 'extreme urgency' to take the site under the Public Works Act.<sup>53</sup>
71. Consent of all owners had not been obtained.<sup>54</sup>
72. A Notice of Intention to take the site was gazetted in June 2010.
73. The site was taken for the purposes of a Native School under the Public Works Act 1908 in early September 1910.<sup>55</sup>
74. No compensation was paid.<sup>56</sup>

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<sup>52</sup> Statutory Declaration by WW Bird, Inspector of Native Schools, 18 April 1910 in Alexander WAI 898 ROI # A63 p407

<sup>53</sup> Secretary for Education to Under Secretary for Public Works, 15 April 1910 in Alexander WAI 898 ROI # A63 p408

<sup>54</sup> Alexander WAI 898 ROI # A63 p408

<sup>55</sup> Alexander WAI 898 ROI # A63 p409

<sup>56</sup> Alexander WAI 898 ROI # A63 p409

75. Taharoa School was still part of the Māori schools system when this system was amalgamated with the public school system in 1968.<sup>57</sup>
76. The Crown failed to compensate or return the site to Māori when the site ceased to be used for the purposes of which it was gifted.

*Orahiri 1 Public Pound*

77. The Orahiri block was issued as a result of the hearing to the Otorohanga case.
78. Orahiri 1 of 933 acres, 2 roods and 39 perches was partitioned on 9 September 1889.<sup>58</sup>
79. The Claimants claim ancestral interests in this block and currently have interest in Orahiri 1 section 28B.<sup>59</sup>
80. On 27 April 1914 the land known as Section 15, Block VIII of the Orahiri Survey District containing 3 roods and 33 perches (“the land”) was permanently alienated from the Orahiri 1 block.<sup>60</sup>
81. The land was alienated pursuant to section 4 of the Public Reserves and Domains Act 1908.<sup>61</sup>
82. The land was acquired as a reserve for the site of a public pound.<sup>62</sup>
83. The land, now known as 41 Otewa Road, was acquired from the Claimants’ tūpuna without adequate consent or consideration.<sup>63</sup>

*Public Works Takings Orahiri 1 sec 17*

84. The Claimants claim an interest in Orahiri 1 sec 17 through Te Kapa Wahanui (alias Ripeka te Wairingiringi)<sup>64</sup>.

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<sup>57</sup> Alexander WAI 898 ROI # A63 p 428

<sup>58</sup> Berghan WAI 898 ROI # A 60 p 608

<sup>59</sup> Title Order 14 September 1892

<sup>60</sup> New Zealand Gazette No. 47 1914 p1957

<sup>61</sup> New Zealand Gazette No. 47 1914 p1957

<sup>62</sup> New Zealand Gazette No. 47 1914 p1957

<sup>63</sup> Claimant Evidence

<sup>64</sup> Partition Order 14 April 1901

85. The Waikato Valley Authority flood protection scheme (“the Scheme”) required extensive flood protection works and public works takings at Otorohanga.
86. Māori were not adequately consulted during the planning or implementation of the Scheme.<sup>65</sup>
87. Pursuant to the Public Works Act 1928, 45 perches from Orahiri 1 section 17 was acquired by the Crown.<sup>66</sup>
88. The land was acquired for soil conservation and river control purposes.<sup>67</sup>
89. The taking was issued by way of Proclamation and gazetted on 3 February 1966.<sup>68</sup>
90. The Crown failed to adequately compensate the Claimants.

*Removal of Houses form the Claimants’ Lands*

91. The Scheme required the removal of well established Māori owned houses located on Māori land along the banks of the Waipa.<sup>69</sup>
92. Orahiri 1 section 17B had two houses owned by Haupokia te Tata.
93. Section 17B consisted of 18 acres 2 roods and 17 perches.
94. Haupokia te Tata had a 1/16<sup>th</sup> share in this block.<sup>70</sup>
95. Haupokia te Tata’s interests in the above section were exchanged for section 17B1 partitioned on 25 November 1964.<sup>71</sup>
96. Section 17B1 consisted of 6 acres 1 rood and 33 perches.<sup>72</sup>

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<sup>65</sup> See above Wāhi Tapu Cause of Action

<sup>66</sup> New Zealand Gazette 3 February 1966

<sup>67</sup> New Zealand Gazette 3 February 1966

<sup>68</sup> New Zealand Gazette 3 February 1966

<sup>69</sup> Alexander WAI 898 ROI # A63 p 276

<sup>70</sup> Partition order Orahiri 1 section 17B dated 18 November 1954

<sup>71</sup> Alexander WAI 898 ROI # A63 p 277

<sup>72</sup> Schedule of Owners dated 25 November 1964

97. Section 17B1 also contained a house.
98. Following the exchange, it was realised that the house received in exchange had been water damaged.<sup>73</sup>
99. The house had to be demolished.<sup>74</sup>
100. Compensation received for Haupokia te Tata's interests in Orahiri 1 section 17B was inadequate.

### **Prejudice**

101. As a result of the Crown's acts and omission, the Claimants claim that they have been prejudicially affected in that they:
- a. had lands acquired by the Crown without adequate consultation or compensation; and
  - b. received compensation that was inadequate and failed to account for the Claimants' ancestral relationship with the land.

## **THIRD CAUSE OF ACTION – CROWN PURCHASING**

### **Breach**

102. In breach of the duty of active protection and good faith and in breach of Article II of te Tiriti o Waitangi, the Crown failed to adequately protect and compensate Māori for their land interests in Te Rohe Potae by adopting predatory purchasing practices to acquire large areas of Māori land.
103. The Claimants adopt the Crown Purchasing Issues Generic Pleadings filed in the Tribunal.

### **Particulars**

#### *Pre-Native Land Court Purchasing: Harihari*

104. The land known as Harihari was located at the southern-most corner of what was to become the Taharoa block ("the land").<sup>75</sup>

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<sup>73</sup> Belgrave et al WAI 898 ROI 898 #A76 p203

<sup>74</sup> Belgrave et al WAI 898 ROI 898 #A76 p203

105. The land contained approximately 6,000 acres.<sup>76</sup>
106. The Crown purchase of the land proceeded in accordance with the general characteristics of McLean's approach to purchases in the north of Te Rohe Potae during the 1854-1858 period.<sup>77</sup>
107. Central to McLean's purchasing policy was the commencement of negotiations with individual willing sellers and subsequently secure the Crown's interests through initial payments to such individuals.<sup>78</sup>
108. On 4 July 1854, the first purchase deed was signed for the Harihari block.
109. The transaction took place between Waitere Pumipi and eight others and Land Commissioner, Donald McLean.
110. Pumipi received an initial payment of £200 for the land, with the remaining £300 to be paid upon the completion of the land being surveyed.<sup>79</sup>
111. The area of the land was not specified in the deed and the land was not formally surveyed until sometime between February 1856 and January 1857.<sup>80</sup>
112. Upon the later inspection of Land Purchasing Officer Rogan, it was revealed that the land was smaller than first anticipated.<sup>81</sup>
113. This led Rogan to reduce the further payment of £300 to £200, via a purported renegotiation with Pumipi.<sup>82</sup>
114. This new agreement however, was not widely communicated or understood.<sup>83</sup>
115. On 10 August 1857, a second purchase deed was signed for the land.

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<sup>75</sup> Boulton WAI 898 ROI #A70 p307

<sup>76</sup> Berghan WAI 898 ROI # A 60 p39

<sup>77</sup> Boulton WAI 898 ROI #A70 p315

<sup>78</sup> Boulton WAI 898 ROI #A70 p315

<sup>79</sup> Boulton WAI 898 ROI #A70 p307

<sup>80</sup> Boulton WAI 898 ROI #A70 p313

<sup>81</sup> Boulton WAI 898 ROI #A70 p308

<sup>82</sup> Boulton WAI 898 ROI #A70 p315

<sup>83</sup> Boulton WAI 898 ROI #A70 p315

116. This transaction took place between Pumipi and 27 others and District Commissioner John Rogan.
117. A further £200 was paid for the land.
118. Continued protest from Te Rohe Potae Māori resulted from the purported sale of the land.<sup>84</sup>
119. This protest concerned the distribution of the money that had been paid and the shortfall of £100 from the price agreed upon.
120. The Claimants' tūpuna, Reihana Wahanui and Haupokia Te Pakaru were amongst those who expressed their grievances over the state of the purported purchase of the land.<sup>85</sup>
121. The Claimants' tūpuna continued to live on the land.<sup>86</sup>
122. The Crown failed to compensate the Claimants' tūpuna for their interests in the land.<sup>87</sup>
123. The Crown also failed to alleviate the grievance of the Claimants' tūpuna regarding the £100 shortfall in the purchase monies.<sup>88</sup>
124. On 30 October 1890, the land was set apart for leasing as a Small Grazing Run under sections 198 to 219 of part VII of the Land Act 1885.<sup>89</sup>
125. Subsequently, the Claimants have been permanently alienated from their ancestral interests in the land.

*Post Native Land Court Purchasing: Taurangi*

126. The Taurangi block was subdivided from the Rohe Potae block on 16 December 1890.
127. The Claimants' tūpuna, Reihana Wahanui, and three others were awarded an original interest in the Taurangi block ("the block").<sup>90</sup>

<sup>84</sup> Boulton WAI 898 ROI #A70 p312

<sup>85</sup> Letter from Wahanui to the Native Minister 16 May 1889 referenced in Boulton #A70 p312 and Letter from Haupokia Te Pakaru to the Native Minister, 19 June 1890 and 18 July 1890 also referenced in Boulton, #A70 p314 and p 312 respectively

<sup>86</sup> Boulton WAI 898 ROI #A70 p314

<sup>87</sup> Boulton WAI 898 ROI #A70 p312

<sup>88</sup> Boulton WAI 898 ROI #A70 p313

<sup>89</sup> NZ Gazette, No.60, 30 October 1890, p1176

128. The block consisted of 24,448 acres.<sup>91</sup>
129. Following the Court's individualisation of title, the Crown pursued an intensive purchasing regime acquiring all but 1000 acres of the block over 11 years.<sup>92</sup>
130. Excessive surveying costs were charge on the block.<sup>93</sup>
131. Multiple charging orders were made pursuant to section 81 of the Native Land Court Act 1886.
132. By 5 November 1892, survey costs outstanding on the block totalled £127.3.3.<sup>94</sup>
133. Excessive surveying costs contributed the need to sell lands to the Crown.
134. The Crown subsequently paid this amount following the acquisition of the block.<sup>95</sup>
135. By 1 January 1901, the Crown had acquired 23,448 acres in the block.<sup>96</sup>
136. The final interests in the block were alienated to private individuals on 28 September 1899 and 18 May 1908.<sup>97</sup>

### **Prejudice**

137. As result of the Crown's aggressive purchasing policies the Claimants have suffered following prejudice:
  - a. the loss of traditional iwi and hapū systems of land tenure and management;
  - b. the loss of significant amounts of ancestral lands at Harihari and Taurangi amongst others;
  - c. the loss of traditional iwi and hapū systems of land tenure and management;

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<sup>90</sup> Berghan WAI 898 ROI # A 60 p1108

<sup>91</sup> Berghan WAI 898 ROI # A 60 p1108

<sup>92</sup> Berghan WAI 898 ROI # A 60 p1108 - 1109

<sup>93</sup> Berghan WAI 898 ROI # A 60 (a) Volume 19 p13836 - 13849

<sup>94</sup> Berghan WAI 898 ROI # A 60 (a) Volume 19 p13849

<sup>95</sup> Berghan WAI 898 ROI # A 60 (a) Volume 19 p13849

<sup>96</sup> Berghan WAI 898 ROI # A 60 p1109

<sup>97</sup> Berghan WAI 898 ROI # A 60 p1109

- d. a consequent loss of economic opportunities; and
- e. a consequent loss of mana.

#### **FOURTH CAUSE OF ACTION – NATIVE LAND COURT AND PROTECTION OF LAND BASE**

##### **Breach**

- 138. The Crown, in breach of its duties of active protection, good faith and in breach of the affirmation of tino rangatiratanga contained in Article II of te Tiriti o Waitangi, established the Native Land Court to investigate and extinguish Māori customary title and convert traditional modes of ownership into individual titles derived from the Crown.
- 139. The Claimants adopt the Native Land Court Generic Pleadings filed in the Tribunal.
- 140. The Claimants also adopt the Protection of Land Base Generic Pleadings filed in the Tribunal.

##### **Particulars**

###### *Te Rohe Potae Title Investigation 1886*

- 141. Reihana Wahanui,<sup>98</sup> was one of the most influential and respected chiefs and spokespeople of Ngāti Maniapoto.<sup>99</sup>
- 142. Wahanui was a strong advocate for Native Committees and reform of the Courts processes.<sup>100</sup>
- 143. Wahanui was also strongly opposed to the efforts of the Native Agent and Land Purchase Officers to use the Rohe Potae block case as a platform to pursue purchases of individual owners.<sup>101</sup>
- 144. On 2 August 1886 Wahanui opened the case for the Rohe Potae block on behalf of the Claimants; Ngāti Maniapoto,

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<sup>98</sup> The Claimants knew Wahanui Te Huatare as Reihana Wahanui and so reference here to Reihana Wahanui is reference to Wahanui Te Huatare.

<sup>99</sup> Bolton WAI 898 ROI # A67 p59

<sup>100</sup> *Husbands & Mitchell, The Native Land Court, Land Titles and Crown Land Purchasing in the Rohe Potae District (1866 – 1907)*, DRAFT September 2011 WAI 898 p37 and 63

<sup>101</sup> *Husbands & Mitchell, The Native Land Court, Land Titles and Crown Land Purchasing in the Rohe Potae District (1866 – 1907)*, DRAFT September 2011 WAI 898 p140

Ngāti Raukawa, Ngāti Hikairo, Whanganui and Ngāti Tuwharetoa.

145. Wahanui based the Claimants' case of all five iwi in the *take tūpuna* of Turongo, their shared ancestor, and from permanent occupation through 12 generations from the time of Turongo, and by his *kaha* in holding the land.<sup>102</sup>
146. Wahanui asserted that all the five tribes had occupied the land continuously and had exclusive rights to the entirety of the land in question.<sup>103</sup>
147. The Court on 20 October 1886 gave its judgment on the Rohe Potae block.<sup>104</sup>
148. The Court reduced multiple testimonies of complex and overlapping whakapapa and customary claims to one single narrative.
149. Upon this narrative, interests in the block were awarded largely in favour of the Claimants confirming, amongst others, the ownership of Wahanui and Maniapoto to the overwhelming bulk of the land within te Rohe Potae.<sup>105</sup>
150. Approximately 4369 names were issued as having an interest in the block,<sup>106</sup> many of whom the Claimants whakapapa to.<sup>107</sup>
151. The Claimants interests affirmed in the Aotea-Rohe Potae judgment have since been severely compromised through the investigation, individualisation and partitioning processes of the Court as well as the Native Land Appellate Court.
152. The processes of the Native Land Court have led to a significant erosion of the Claimants' land base.

### *Taharoa*

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<sup>102</sup> Husbands & Mitchell, *The Native Land Court, Land Titles and Crown Land Purchasing in the Rohe Potae District* (1866 – 1907), DRAFT September 2011 WAI 898 p103

<sup>103</sup> Husbands & Mitchell, *The Native Land Court, Land Titles and Crown Land Purchasing in the Rohe Potae District* (1866 – 1907), DRAFT September 2011 WAI 898 p103

<sup>104</sup> Berghan WAI 898 ROI # A 60 p82

<sup>105</sup> Husbands & Mitchell, *The Native Land Court, Land Titles and Crown Land Purchasing in the Rohe Potae District* (1866 – 1907), DRAFT September 2011 WAI 898 p123 and 126

<sup>106</sup> Husbands & Mitchell, *The Native Land Court, Land Titles and Crown Land Purchasing in the Rohe Potae District* (1866 – 1907), DRAFT September 2011 WAI 898 p123 and 143

<sup>107</sup> Claimant identified tūpuna within Lists of Owners produced by the Court 25 October – 5 November 1886 2 OT p85-380

153. Following the Rohe Potae title Investigation, the Taharoa block underwent a further investigation of title.
154. A title order was issued on 13 August 1888, awarding interests to 369 owners.<sup>108</sup> The Claimants have whakapapa to the following owners:<sup>109</sup>
- a. Tema Tata;
  - b. Poke Tata and Mereuina Tata (children of Tema Tata);
  - c. Haupokia Te Pakaru;
  - d. Hari Maruru;
  - e. Heimara Te Whanonga;
  - f. Hari Te Whanonga;
  - g. Raahu Te Huatare;
  - h. Mehana Tuoro;
  - i. Moe Aranui;
  - j. Ngahiriwa Te Pakaru;
  - k. Nuitone te Kohuwai;
  - l. Repeka Te Wairingringi;
  - m. Reihana Wakahoehoe;
  - n. Rangiterewai Te Pakaru;
  - o. Te Hiwini Te Huatare; and
  - p. Wahanui Te Huatare.
155. On 30 August 1888, the Taharoa block was partitioned. Taharoa A of 15,669 acres was awarded to 234 people of Ngāti Mahuta (“the block”).<sup>110</sup>

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<sup>108</sup> Berghan WAI 898 ROI # A 60 p1052

<sup>109</sup> Claimant identified tūpuna within Lists of Owners produced by the Court as recorded 5 November 1889

<sup>110</sup> Berghan WAI 898 ROI # A 60 p1052

156. The Claimants' tūpuna, Tema Tata, and his two children were awarded an interest in the block.<sup>111</sup>
157. The Claimants claim an interest in the block through Tema Tata and Ngāti Mahuta.
158. In 1840, Rohe Potae Māori exercised tino rangatiratanga over all 23,620 acres of the Taharoa A block.<sup>112</sup>
159. On 1 February 1908 Taharoa A was further partitioned into seven blocks.<sup>113</sup>
160. The Crowns' interests gained through the purchasing of individual shares were partitioned and defined as Taharoa A5 of 177 acres.<sup>114</sup>
161. Between 1910 and 1950, Taharoa A was excessively partitioned into multiple smaller blocks.<sup>115</sup>
162. The Crown was awarded a further 36 acres.<sup>116</sup>
163. By 2010 only 8622 acres of the Taharoa A block remained in Māori ownership.<sup>117</sup>
164. Through the Court's investigation, individualisation and partitioning processes and the Crown's purchasing programme, Taharoa A became excessively fragmented.
165. The individualisation and fragmentation of the block exposed the block to multiple alienations, primarily by way of private purchasing.<sup>118</sup>
166. Approximately 1800 acres of the block was ultimately alienated by way of private purchases.<sup>119</sup>
167. Pursuant to section 182 of the Māori Affairs Act 1953, on 17 October 1958, 17 of the fragmented Taharoa A blocks were amalgamated to form the Taharoa C block consisting of 1328.3000 hectares.<sup>120</sup>

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<sup>111</sup> Title Order to Taharoa A dated 30 August 1888

<sup>112</sup> Berghan WAI 898 ROI # A 60 p1052.

<sup>113</sup> Berghan WAI 898 ROI # A 60 p1057

<sup>114</sup> Berghan WAI 898 ROI # A 60 p1057

<sup>115</sup> Berghan WAI 898 ROI # A 60 p1057 - 1064

<sup>116</sup> Taharoa A7B, Berghan WAI 898 ROI # A 60 p1058

<sup>117</sup> Berghan WAI 898 ROI # A 60 p1065 -1067

<sup>118</sup> Berghan WAI 898 ROI # A 60 p1064

<sup>119</sup> Berghan WAI 898 ROI # A 60 p1064

<sup>120</sup> Taharoa C Partition Order

168. Taharoa C was awarded to 547 owners.<sup>121</sup>
169. Taharoa C was incorporated on 24 March 1959 pursuant to section 271 of the Māori Affairs Act 1953.<sup>122</sup>
170. The Claimants claim ancestral interests in the lands that are now held by the Taharoa C block incorporation.
171. Through the individualisation of title and partitioning processes and the subsequent Crown and private acquisitions of the Taharoa lands, the Claimants ancestral interests in the block have become alienated.

*Taumatotara*

172. On 7 February 1889 Taumatotara (11,480 acres) underwent an investigation of title to subdivide it from the Rohe Potae block.<sup>123</sup>
173. A counter-claim regarding the interests of Haupokia, the Claimants' tūpuna, was put before the Court.<sup>124</sup>
174. Haupokia claimed the block through conquest and by mana and permanent occupation.
175. The claim of Haupokia and his people through occupation was partially upheld by the Court.<sup>125</sup>
176. On 11 March 1889 the Court delivered its judgment awarding Haupokia and his group 1,500 acres.<sup>126</sup>
177. On 18 March 1899 orders were made for eight Taumatotara blocks.<sup>127</sup>
178. Haupokia and others were granted Taumatotara No.3 containing 1,500 acres.<sup>128</sup>
179. The schedule of owners for this block at 1896 lists 71 names. The Claimants have whakapapa to the following tūpuna:

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<sup>121</sup> Taharoa C Partition Order

<sup>122</sup> Taharoa C Memorial Schedule File 715/KW

<sup>123</sup> Berghan WAI 898 ROI # A 60 p1095

<sup>124</sup> Otorohanga MB No.34, pp.217-218

<sup>125</sup> Otorohanga MB No.35, pp.103-104

<sup>126</sup> Otorohanga MB No.35, p.96

<sup>127</sup> Berghan WAI 898 ROI # A 60 p1100

<sup>128</sup> Berghan WAI 898 ROI # A 60 p1099

- a. Haupokia te Pakaru;
- b. Hari Whanonga;
- c. Hari Matetoto;
- d. Haupokia te Pakaru;
- e. Hari Whanonga;
- f. Hari Matetoto;
- g. Kamau Haupokia;
- h. Kohatu Hari;
- i. Te Kapa Rahapa;
- j. Te Koi Haupokia;
- k. Te Kore te Kare;
- l. Rangiterewai Te Pakaru;
- m. Rangitotohu Hema;
- n. Rerehau Haupokia;
- o. Te Raukura Haupokia;
- p. Tete Kahunui;
- q. Tehu Haupokia;
- r. Tiweka Haupokia;
- s. Teihea Haupokia;
- t. Teke Hari;
- u. Taimuaha Hari;
- v. Te Tata Henare;
- w. Wairata Hari; and

x. Te Wharaunga Te Kare.

180. Five notices of appeal were then registered in the Appellant Court in March and April 1899.
181. The appeals concerned the Court's judgment in its investigation of title to the Taumatotara block.<sup>129</sup>
182. These were incorporated together and heard in a single case.<sup>130</sup>
183. One of the appellants was Haupokia and others.
184. Haupokia's appeal was withdrawn however Haupokia was compelled to appear as a Counter-Claimant defending his rights to the block, against an appeal that was allowed.<sup>131</sup>
185. The Appellant Court subsequently overruled Haupokia's rights to the land via conquest and annulled the previous Court's award of 1500 acres.<sup>132</sup>
186. On 13 June 1900 as a result of the appeal, further orders were issued to Taumatotara block numbers 1-6.
187. The Claimants were denied an interest in any of the subsequent blocks following the appeal.
188. The operation of the Appellate Court subsequently denied the Claimants their ancestral interests in the Taumatotara block, as depicted by Haupokia in both the Court and the Appellate Court.

### **Prejudice**

189. As result of the Crown's actions and omissions, the Claimants have suffered following prejudice:
- a. the loss of traditional iwi and hapū systems of land tenure and management;
  - b. the loss of significant amounts of ancestral lands at Taharoa and Taumatotara amongst others;

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<sup>129</sup> Husbands & Mitchell, *The Native Land Court, Land Titles and Crown Land Purchasing in the Rohe Potae District* (1866 – 1907) September 2011 WAI 898 DRAFT p423

<sup>130</sup> Husbands & Mitchell, *The Native Land Court, Land Titles and Crown Land Purchasing in the Rohe Potae District* (1866 – 1907) September 2011 WAI 898 DRAFT p423

<sup>131</sup> Otorohanga Minute Book No 37, p333

<sup>132</sup> Otorohanga Minute Book No 37, p340

- c. the loss of traditional iwi and hapū systems of land tenure and management;
- d. a consequent loss of economic opportunities; and
- e. a consequent loss of mana.

## **FIFTH CAUSE OF ACTION – PRIVATE PURCHASING**

### **Breach**

190. In breach of Treaty principles of active protection and good faith, the Crown enacted legislation that facilitated private purchases of Māori land:
- a. without requiring any or proper notice to owners; and/or,
  - b. without requiring the agreement or consent of a sufficient number of owners or shareholders; and/or
  - c. without due regard to the retention of sufficient lands for the present and future needs of the whānau and hapū.
191. The Claimants adopt the Private Purchasing Generic Pleadings filed in the Tribunal.

### **Particulars**

#### *Orahiri 1 section 34*

192. Orahiri 1 section 34 consisting of 111 acres, 1 rood and 20 perches was partitioned from the Orahiri 1 block on 4 April 1901 (“the block”).
193. The Claimant’s father and Co-claimant’s grandfather Haupokia te Tata held an interest in the block through the original shareholder Te Kapa Wahanui.
194. John Somerville and his wife Doreen, acquired a lease of the block on 22 August 1961.<sup>133</sup>

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<sup>133</sup> Memorial Schedule Orahiri 1 sec 34

195. As of 7 November 1975 John Archer and his wife Jeryl began acquiring shares in the block through the purchase of individual interests.<sup>134</sup>
196. On 18 October 1978, John Somerville and his wife Doreen also acquired shares in the block.<sup>135</sup>
197. On 27 May 1981 the block was transferred to John and Doreen Somerville and John and Jeryl Archer.<sup>136</sup>
198. The block is no longer Māori land.
199. The Claimants' interests in the block have become permanently alienated.

*Kinohaku West 11D3B1A*

200. On 28 April 1898, the Crown's interests were defined in Kinohaku West No.11 block.<sup>137</sup>
201. One of the residual blocks, 11D, contained 714 acres, 3 roods and 17 perches.
202. Between 19 December 1900 and 10 April 1916 this block was subject to multiple partitions.<sup>138</sup>
203. A resulting block, Kinohaku West 11D3B1A, containing 71 acres, 2 roods and 26 perches ("the block") was awarded to four owners on 10 April 1916.<sup>139</sup>
204. Haupokia te Tata subsequently held an interest in the block.
205. In 1953, the block had 17 owners and was occupied by owner G. Tata.<sup>140</sup>
206. In September 1966 the block was inspected and found to be well maintained.<sup>141</sup>
207. It was also found that the adjoining land owner, A. Wright, had been farming the land.<sup>142</sup>

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<sup>134</sup> Memorial Schedule Orahiri 1 sec 34

<sup>135</sup> Memorial Schedule Orahiri 1 sec 34

<sup>136</sup> Memorial Schedule Orahiri 1 sec 34

<sup>137</sup> Berghan WAI 898 ROI # A 60 p346

<sup>138</sup> Berghan WAI 898 ROI # A 60 p346 - 347

<sup>139</sup> Berghan WAI 898 ROI # A 60 p347

<sup>140</sup> Bassett & Kay WAI 898 ROI # A 75 p303

<sup>141</sup> Bassett & Kay WAI 898 ROI # A 75 p303

208. On 1 February 1967, it was recommended that the Māori Trustee re-enter the block.<sup>143</sup>
209. On 18 July 1969, the Māori Trustee sold the block to the adjoining farm owner, A. Wright for \$5578, thus permanently alienating the Claimants from their ancestral interests in the block.<sup>144</sup>

#### *Terengohengohe A*

210. On 24 June 1889, the Terengohengohe block containing 29 acres and 2 roods was awarded to 31 owners.<sup>145</sup>
211. On 27 March 1914, Terengohengohe A containing 11 acres, 1 rood and 27 perches was awarded to 13 owners (“the block”).
212. One of these owners was the Claimants’ tūpuna Ripeka Te Wairingiringi, who held one of twelve original shares in the block.
213. Haupokia te Tata, subsequently held an interest in the block.
214. On 25 January 1940, the block was sold to Mary Thompson for £212, and thus permanently alienated the Claimants from their ancestral interests in the block.<sup>146</sup>

#### *Kaingapipi 5A*

215. On 12 November 1889, Kaingapipi 5 containing 275 acres, 3 roods and 20 perches was awarded to four owners.<sup>147</sup>
216. Kaingapipi 5 was further partitioned with the Claimants’ tūpuna being awarded interests in Kaingapipi 5A (“the block”).
217. The block contained 23 acres and 2 roods.<sup>148</sup>
218. As of 1964, Haupokia te Tata, held a 3.6983 share interest of 23.5 shares in the block.<sup>149</sup>

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<sup>142</sup> Bassett & Kay WAI 898 ROI # A 75 p303

<sup>143</sup> Bassett & Kay WAI 898 ROI # A 75 p303

<sup>144</sup> Kinohaku West 11D3B1A Alienation Notice File Ref 7/979

<sup>145</sup> Berghan WAI 898 ROI # A 60 p1111

<sup>146</sup> Berghan WAI 898 ROI # A 60 p1111

<sup>147</sup> Berghan WAI 898 ROI # A 60 p189

<sup>148</sup> Berghan WAI 898 ROI # A 60 p190

219. Later that same year, Haupokia te Tata's share interests were vested in Peti, Te Māori and Te Pere te Tata.<sup>150</sup>
220. The block was subsequently purchased by E. Voyce and became general land on 13 August 1969, permanently alienating the Claimants from their ancestral interests in the block.<sup>151</sup>

### *Rangitoto A33*

221. On 14 March 1904, Rangitoto A33 consisting of 331 acres, 3 roods and 31 perches was awarded to 12 owners ("the block").<sup>152</sup>
222. The Claimants' tūpuna were original shareholders in the block and subsequently Haupokia te Tata acquired 0.1094 a share of the 1.75 shares in the block.<sup>153</sup>
223. On 13 March 1970, the block was sold to Horokino Pastrol Ltd.

### **Prejudice**

224. As result of the Crown's actions and omissions the Claimants have suffered following prejudice:
- a. the loss of traditional iwi and hapū systems of land tenure and management;
  - b. the loss of significant amounts of ancestral lands;
  - c. the loss of traditional iwi and hapū systems of land tenure and management;
  - d. a consequent loss of economic opportunities; and
  - e. a consequent loss of mana.

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<sup>149</sup> Schedule of Ownership Orders Kaingapipi 5A

<sup>150</sup> Partition Order dated 27 August 1964

<sup>151</sup> Certificate of Title under Land Transfer Act No 10D/868

<sup>152</sup> Berghan WAI 898 ROI # A 60 p876

<sup>153</sup> Complied list of owners as at 28 May 1965

## SIXTH CAUSE OF ACTION – MĀORI TRUSTEE

### Breach

225. In breach of article II of Te Tiriti o Waitangi, and the principles of good faith, active protection, consultation, and partnership and of the right of development, the Crown vested the Claimants' land interests in the Māori Trustee without adequate consultation. Subsequently the Māori Trustee granted a lease over the land that was deficient as to the term, valuation, and rent payable.
226. The Claimants adopt the Māori Land Administration and Development Generic Pleadings filed in the Tribunal.
227. The Claimants also adopt the Vested Lands Issues Generic Pleadings filed in the Tribunal.

### Particulars

#### *Introduction*

228. Te Kauri 2K1 of approximately 188 acres, 1 rood and 20 perches, was partitioned by the Court on 28 February 1934 and awarded to five owners ("the block").<sup>154</sup>
229. As of 27 August 1964, Haupokia te Tata, held one of seven shares in the block.<sup>155</sup>

#### *Te Kauri 2K1*

230. In 1954, the Court pursuant to section 34 of the Māori Purposes Act 1950 appointed the Māori Trustee as agent for the owners of the block without adequate consent and consultation from the owners.<sup>156</sup>
231. For ten years the Māori Trustee acted as agent for the owners.<sup>157</sup>
232. During this time the Māori Trustee failed to lease the block or gain any substantial returns from the block.<sup>158</sup>

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<sup>154</sup> Te Kauri 2K1 Partition Order 28 February 1934

<sup>155</sup> Te Kauri 2K1 Partition Order 27 August 1964

<sup>156</sup> Bassett & Kay WAI 898 ROI # A 75 p311

<sup>157</sup> Bassett & Kay WAI 898 ROI # A 75 p311

<sup>158</sup> Bassett & Kay WAI 898 ROI # A 75 p311

## **Prejudice**

233. The owners were unable to manage their land according to their wishes for a period of ten years.
234. The land was not managed in such a way as to yield any benefit, financial or otherwise, for the owners.
235. The Māori Trustee failed to consult with owners when making decisions around leasing the land, the amount the lease should be and when the lease should be brought to an end.
236. The owners had to undergo a long, expensive and unnecessary process in order to regain the management of their land.

## **SEVENTH CAUSE OF ACTION – COMPULSORY ACQUISITION OF UNECONOMIC SHARES**

### **Breach**

237. In breach of the Treaty of Waitangi and the principles of active protection and equality, the Crown enacted legislation that vested in the Māori Trustee shares in Māori Land that were deemed to be 'uneconomic'.

### **Particulars**

#### *The Māori Affairs Act 1953*

238. Part XII and XIII of the Māori Affairs Act 1953 ("the Act") established the uneconomic shares conversion scheme.
239. Pursuant to the Act, the Māori Trustee was empowered to acquire shares in Māori land through the purchasing of shares or automatically if they were defined as 'uneconomic'.
240. Uneconomic shares were defined as being valued at £25 or less.<sup>159</sup>
241. Uneconomic shares were then redistributed amongst the remaining owners or an incorporation of Māori owners.<sup>160</sup>

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<sup>159</sup> Section 181 (2) of the Act

242. The Māori Trustee unduly profited from the purchase and resale of said uneconomic interests.
243. The compulsory acquisition of uneconomic interests continued until 1974.

#### *Te Kauri 2K1*

244. The Māori Trustee acquired multiple interests in the block pursuant to the Act.<sup>161</sup>
245. By 20 January 1970, the block had been consolidated to three owners and the interests of Haupokia te Tata had been alienated.<sup>162</sup>

#### **Prejudice**

246. As a result of the Crown's actions and omissions, the Claimants have suffered following prejudice:
- a. the loss 1 out of 7 share interest in the Te Kauri 2K1 block;
  - b. alienation from and loss of tino rangātiratanga over land interests;
  - c. loss of economic opportunities; and
  - d. a consequent loss of mana.

### **EIGHTH CAUSE OF ACTION – EUROPEANISATION OF LAND**

#### **Breach**

247. In breach of Te Tiriti and the Treaty principles of active protection, good faith and partnership, the Crown enacted legislation that resulted in the Claimants' lands being converted to general land without adequate consultation.

#### **Particulars**

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<sup>160</sup> Bassett & Kay WAI 898 ROI # A 75 p395

<sup>161</sup> Certificate Evidencing Sale of Interests by Maori Trustee of Te Kauri 2K1 13 February 1970

<sup>162</sup> Consolidated Order Te Kauri 2K1

248. Conversion schemes were designed by the Crown to address perceived problems relating to multiply owned Māori land and to change the form of Māori land ownership.<sup>163</sup>
249. In 1967 the Crown enacted the Māori Affairs Amendment Act (“the Act”).
250. The Act was an extensive amendment to the Māori Affairs Act 1953.
251. There was considerable concern among Māori about most aspects of the Act.<sup>164</sup>
252. All Māori Members of Parliament spoke against the Bill.<sup>165</sup>

*Europeanisation of Land under Part 1 of the Māori Affairs Amendment Act 1967*

253. Part 1 of the Act provided for the conversion of Māori land to general land where the land had four or less owners.
254. If a block had four or fewer owners the Registrar of the Court could automatically declare the land to no longer have the status of Māori land.<sup>166</sup>
255. Changing the status to general land was designed to make alienations of such blocks easier for the owners.<sup>167</sup>
256. The Act made no provision for consultation with Māori regarding the Europeanisation of their land.<sup>168</sup>
257. The Act was widely unpopular amongst Māori and was repealed in 1974.<sup>169</sup>
258. Two percent of the total land area within Te Rohe Potae was alienated via the Europeanisation provisions of the Act during its seven years of operation.<sup>170</sup>

<sup>163</sup> Bassett & Kay WAI 898 ROI # A 75 p394

<sup>164</sup> Bassett & Kay WAI 898 ROI # A 75 p404

<sup>165</sup> Bassett & Kay WAI 898 ROI # A 75 p404

<sup>166</sup> Bassett & Kay WAI 898 ROI # A 75 p415

<sup>167</sup> Bassett & Kay WAI 898 ROI # A 75 p415

<sup>168</sup> Bassett & Kay WAI 898 ROI # A 75 p415

<sup>169</sup> Walzl WAI 1040 ROI # A38 p1071

<sup>170</sup> Bassett & Kay WAI 898 ROI # A 75 p22

259. The legislation also made management of land more difficult.
260. Previously Māori were able to deal with their land issues in the Māori Land Court.
261. These amendments moved jurisdiction to the High Court as the land had become general land.
262. The High Court, as well as being unknown to Māori, is much more expensive and much further away.

#### *Te Kauri 2K1*

263. As of 27 August 1964, Haupokia te Tata, held one of seven shares in the block.<sup>171</sup>
264. Due to the acquisition by the Māori Trustee of shares, deemed to be uneconomic under the Māori Affairs Act 1953, many shareholder interests in the block became alienated.
265. By 1971, less than four owners held shares in the block.
266. In 1971, the block was declared European land under part 1 of the Māori Affairs Amendment Act 1967.<sup>172</sup>

#### **Prejudice**

267. As a result of the Crown's acts and omission, the Claimants claim that they have been prejudicially affected in that:
- a. Māori land was Europeanised without the knowledge or consent of the owners;
  - b. As a result Māori land owners were unaware that they owned the land;
  - c. The Europeanisation of land undermined the succession of land by Māori and Māori land owners did not know how to pass ownership on to their children and whanau;

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<sup>171</sup> Te Kauri 2K1 Partition Order 27 August 1964

<sup>172</sup> Te Kauri Record Sheet reference CT 13C/325

- d. The owners faced increased costs and difficulty in dealing with and managing the land;
- e. The owners were faced with a difficult and expensive process when they went about having the land converted back to Māori freehold land; and
- f. Land that was Māori Freehold land remains Europeanised against the owners' wishes.

## **NINTH CAUSE OF ACTION – LANDLOCKED LAND**

### **Breach**

268. In breach of the Treaty principles of active protection and good faith, the Crown, through the institution of the Native Land Court, facilitated the excessive fragmentation of the Claimants' lands in a way that led to parts of the Claimants' lands to become landlocked.

### **Particulars**

269. The individualisation and subsequent partitioning of customary Māori Land through the Native Land Court ("the Court") has led to the excessive fragmentation of the Claimants' lands within te Rohe Potae.

270. When investigating land titles and granting title orders to Māori Land, the Court failed to take reasonable care in securing legal access to partitioned lands.

271. As a result parts of the Claimants' lands have become landlocked.

272. To rectify this situation the Claimants will incur costs through proceedings in the Māori Land Court.

### ***Puketiti 4B***

273. On 15 February 1892 Puketiti came before the Court for an investigation of its title to subdivide it from the Rohe Potae block.<sup>173</sup>

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<sup>173</sup> Berghan WAI 898 ROI # A 60 p841

274. The original Puketiti block consisted of approximately 24,000 acres.<sup>174</sup>
275. On 22 July 1892, the Court partitioned the Puketiti block into five parts.<sup>175</sup>
276. The Claimants' tūpuna were awarded an interest in the Puketiti 4 block, consisting of 2,673 acres.<sup>176</sup>
277. This block was subsequently further partitioned on 14 Nov 1906.<sup>177</sup>
278. The Claimants' tūpuna were awarded an interest in the Puketiti 4B block, consisting of 578 acres ("the land").
279. The Claimants currently have an interest in the land under the Tata Henry Whanau Trust.
280. The Tata Henry Whanau Trust owns 0.4167 of the 3 shares in the land.
281. The Crown failed to secure legal access to the land through the Court's partitioning process.
282. The land has been landlocked since its partition from the Puketiti 4 block.
283. The Claimants currently access the land via Wall Road to the South.
284. They must then pass across Puketiti 4A as well as the lands of J.D Wallis.
285. The Claimants rely upon the goodwill and an informal arrangement with the Huia whanau, who are the trustees of the Puketiti 4A, to gain access across their lands.
286. This arrangement could be terminated at any point in time, and subsequently the Claimants would not have any access to the land.
287. Through the actions of the Crown, the Claimants have been forced to resort to the Courts in order to pursue legal access to the land.

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<sup>174</sup> Berghan WAI 898 ROI # A 60 p841

<sup>175</sup> Berghan WAI 898 ROI # A 60 p842

<sup>176</sup> Berghan WAI 898 ROI # A 60 p842

<sup>177</sup> Berghan WAI 898 ROI # A 60 p843

288. This comes with substantial costs to the Claimants as well as the other shareholders of the land.

### **Prejudice**

289. As a result of the Crown's acts and omissions, the Claimants have been prejudicially affected in that they:

- a. have been and continue to be prevented from freely accessing their land, of which holds cultural and historical significance;
- b. have been and continue to be restricted in the economic development and the full utilisation of the land and its resources; and
- c. have been forced to resort to the Courts to pursue legal access to the land.

## **TENTH CAUSE OF ACTION – MALADMINISTRATION OF MĀORI EDUCATION**

### **First Breach – Assimilation**

290. In breach of the Treaty principle of active protection, the Crown's policy of assimilating the Māori decimated the Māori language and culture.

### **Particulars**

291. By the mid-1840s, Māori interest in education was declining. One response to the declining interest was to emphasise the teaching of English. So boarding schools were established to teach Māori youth English outside their home environment.<sup>178</sup>

292. In 1847, *An Ordinance for Promoting the Education of the Youth of the Colony of New Zealand* ("the Education Ordinance 1847") was passed by the Legislative Council. Although applicable to both races, Governor Grey sought to apply it chiefly to funding the education of Māori and half-caste children.<sup>179</sup>

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<sup>178</sup> Christoffel WAI 898 #A27 p16-17

<sup>179</sup> Ibid

293. As a cost-saving measure, Grey was to leave the education of Māori children to the already established mission schools.<sup>180</sup>
294. On-going financial issues with Grey's system led to the passing of the Native Schools Act 1858.<sup>181</sup> To be eligible for state funding, the mission schools were now required to provide religious instruction, industrial training and instruction in the English language. Students were also required to board.<sup>182</sup>
295. The main purpose of industrial training was to use pupils' labour in agricultural and other enterprises to help fund the costs of education.<sup>183</sup> This adversely affected learning opportunities as so much time was devoted to this kind of activity.
296. Towards the end of the 1860s, it was evident that Māori interest in European-style education had waned as had their level of educational achievement.<sup>184</sup> The quality of instruction was poor as was the standard of food, clothing and lodging at the boarding schools.<sup>185</sup> In any event, the war of the 1860s brought an end to Grey's mission school system and an end to missionary schooling altogether.<sup>186</sup>
297. The onset of the settler version of Māori education would feature the enforced teaching of English and the heavy entrenchment of the assimilationist goal of civilizing the Māori.<sup>187</sup>
298. The Native Schools Act 1867 provided for the establishment of schools in Māori villages following an application from a 'considerable number' of the male inhabitants of a district. Land and other contributions were required from interested Māori communities as well.<sup>188</sup> Due to the recent wars and the confiscation of their lands, Te Rohe Potae Māori showed little interest in taking up the offer of schools.<sup>189</sup>

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<sup>180</sup> Ibid p16

<sup>181</sup> Ibid p16

<sup>182</sup> Ibid p16

<sup>183</sup> Ibid p16

<sup>184</sup> Ibid p20

<sup>185</sup> Ibid p19

<sup>186</sup> Ibid p20

<sup>187</sup> Ibid p124-125

<sup>188</sup> Ibid p20

<sup>189</sup> Ibid p22

299. Parliamentary debates concerning the 1867 Act reveal how central the assimilationist ideology was to it.<sup>190</sup> Educating Māori so they could speak, read and write in English was important but so too were the objectives of their becoming law abiding citizens and acquainting Māori with English ways, customs and thinking.<sup>191</sup>
300. Placing European school buildings and families in Māori settlements as exemplars of a new and more desirable way of life was a deliberate part of the civilizing strategy.<sup>192</sup> The idea of educated Māori returning to their villages to sow newly acquired thought processes was an important strategy as well.<sup>193</sup>
301. Under the 1858 Act, lessons could be conducted in te reo Māori . The 1867 Act stipulated a stricter requirement in that all lessons were to be in the English language “as far as practicable” .<sup>194</sup>
302. Under the Native Schools Code 1880, the Māori language could be used to assist those in the junior classes, but the continued use of the Māori language to teach senior pupils was seen by Crown officials as impeding the work of educating and civilizing Māori .<sup>195</sup>
303. For more than 60 years from 1867, no Māori cultural activities or history was taught in Te Rohe Potae classrooms.<sup>196</sup>
304. During the 1920s, New Zealand education officials became adherents to the British Government’s new view that education should incorporate the traditions of indigenous people and preserve the best of their institutions.<sup>197</sup>
305. This development was tacit acceptance by education officials that the assimilation policy was a failure, that Māori pupils were not interested in a wholly Eurocentric curriculum and that their learning had been adversely affected as a result.<sup>198</sup>

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<sup>190</sup> Ibid p124-125.

<sup>191</sup> Ibid p125

<sup>192</sup> Ibid p125-126

<sup>193</sup> Ibid p127

<sup>194</sup> Ibid p113

<sup>195</sup> Ibid p23

<sup>196</sup> Ibid p132

<sup>197</sup> Ibid p133

<sup>198</sup> Ibid p133, per Douglas Ball

306. However rather than dismantling the assimilationist programme altogether, in 1929, Māori arts and crafts such as weaving and carving were introduced into the curriculum, as was the teaching of some Māori history and various myths and legends.<sup>199</sup>
307. A corollary to this curriculum change was the requirement that teachers study Māori communal and social life, their music, crafts and recreations.<sup>200</sup> Another corollary was that Māori parents volunteer their time, knowledge and resources to effect the curriculum change.<sup>201</sup>
308. The Department's changes to the Native school curriculum fell short of designing a Māori culture syllabus and of making the teaching of such a syllabus mandatory for all Native school teachers.<sup>202</sup>
309. The extent to which Māori culture was incorporated into the Native school curriculum in Te Rohe Potae was dependent to a large degree on individual teachers and so the results varied from school to school and from era to era.<sup>203</sup>
310. However, the inability or unwillingness of teachers to teach Māori culture, the lack of interest or inability on the part of Māori parents to volunteer their time and resources, and the Department's failure to design and implement a dedicated Māori culture syllabus meant the curriculum changes had little positive effect on Māori educational achievement.
311. The Native school curriculum reforms of the 1930s did not mean the end of assimilation and nor did it mean that the Department had deviated from its policy of assimilation.<sup>204</sup>
312. The programme of assimilation extended to teachers and officials actively discouraging pupils from participating in tangi and at other cultural events.<sup>205</sup>
313. The reading books used in Native schools were highly Eurocentric. The values and themes were European as

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<sup>199</sup> Ibid p132

<sup>200</sup> Ibid p134

<sup>201</sup> Ibid

<sup>202</sup> Ibid p135

<sup>203</sup> Ibid p135-139

<sup>204</sup> Ibid p143

<sup>205</sup> Ibid p140, 141

were the activities and past-times they engaged in. The characters were European in appearance and they had European names. Their clothing, family structures and the food they ate were always European. The effect was that the European world mattered and the Māori world didn't.<sup>206</sup>

314. The sports Māori students played and games and activities the schools taught were Eurocentric. Considerable effort went into instilling patriotism and loyalty to the empire in Māori schools. This would take the form of the regular singing of the national anthem, raising the New Zealand flag, etc.<sup>207</sup>
315. Māori School Committees were barred from querying the content and the delivery of the syllabus. This weakened their ability to oppose the implementation of the assimilationist policies.<sup>208</sup>
316. The policy of assimilation meant that schools became a societal filter determining who would compose the middle class, who would enter the professions and who would constitute the working class.<sup>209</sup>

#### *Te Rohe Potae Lately*

317. The Crown's assimilative practices have left a legacy of low educational achievement amongst Te Rohe Potae Māori .
318. The Education Review Office reports on schools in Te Rohe Potae for the last 20 years regularly point out the failure of Māori in the system. The core subjects of reading writing and arithmetic remain the obstacles to Māori succeeding.<sup>210</sup>
319. Most Māori students enter school with achievement levels well below the national level. The data indicates they make good steady progress in their first year but the picture becomes confusing as they progress through the school. Standardised testing shows a significant number are achieving in the 'at risk' category in their senior years

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<sup>206</sup> Claimant evidence

<sup>207</sup> Claimant evidence

<sup>208</sup> Christoffel WAI 898 #A27 p 89-92

<sup>209</sup> Ibid p173, 192-193

<sup>210</sup> ERO Report on Taumarunui Primary School with a roll that is 93% Maori.

while other standardised tests show they are at levels above this. Similar results are seen in numeracy.<sup>211</sup>

320. Further professional development is needed to increase senior management's understanding and effective use of student achievement data in the class, syndicate and school levels. Teachers have been involved in professional development to improve their understanding of the teaching of reading. They have also had professional development in using assessment tools.<sup>212</sup>
321. Data from entry assessments show that students enter with low levels of oral language at age 5. However information from the Six Year Observation Survey shows that after one year at school, most of these students are achieving within the average range (stanine 4).<sup>213</sup>
322. Achievement information in reading show good progress was made in Years 4 to 8 in 2008. The majority however are achieving at below the expected curriculum level in reading. Achievement information from the STAR reading test shows 'an over representation of students in the below average range'. Data shows there was some improvement in 2008.<sup>214</sup>
323. Data on numeracy achievement shows that ...'most are yet to reach the expected stage for their year level'.<sup>215</sup>

### **Second Breach – Emphasis on Industrial Training**

324. In breach of the Treaty principle of active protection and the right to development, the Crown designed and delivered a syllabus that restricted curriculum choices for Māori thus defining and restricting their vocational aspirations and suitability.

### **Particulars**

325. From the outset, the Education Ordinance 1847 emphasized industrial training for Māori pupils.<sup>216</sup>

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<sup>211</sup> ERO report on Taumarunui Primary School 2003

<sup>212</sup> ERO Report on Taumarunui Primary School 2003

<sup>213</sup> ERO Report on Taumarunui Primary School 2011

<sup>214</sup> ERO Report on Taumarunui Primary School 2011

<sup>215</sup> ERO Report on Taumarunui Primary School 2011

<sup>216</sup> Christoffel WAI 898 #A27 p16 -17

326. Industrial training is taken to mean, inter alia, handcraft, woodwork, agriculture, cookery and hygiene.<sup>217</sup>
327. The Native Schools Act 1858 continued with industrial training for Māori pupils, making it an important tenet of the curriculum taught by the mission schools. Agriculture and sewing were typically involved.<sup>218</sup>
328. However, industrial training also involved the use of pupils' labour in agricultural and other enterprises to help fund the costs of education.<sup>219</sup> This adversely affected learning opportunities as so much time was devoted to this kind of activity.
329. During the early part of the 20<sup>th</sup> century, the Department of Education undoubtedly continued to subject Māori to a manual, vocationally-oriented curriculum.<sup>220</sup>
330. However the equipment-related expense of teaching some of these courses meant that gardening, sewing, cooking and woodwork could not always be taught in many Native schools in Te Rohe Potae.<sup>221</sup>
331. In addition, many of the Native schools involved sole-charge teachers whose ability to teach a range of manual or industrial skills was limited, thus limiting the types of industrial training course offered.<sup>222</sup>
332. In 1912, it was reported that handiwork was used to keep Māori pupils occupied while other students were taught other subjects. Due to the expense involved, agriculture was not taught but school gardens were established at over half of the 104 native schools. Sewing was prevalent.<sup>223</sup>
333. By contrast, two-thirds of general schools in 1912 ran manual classes with the most common being agriculture, woodwork and cooking.<sup>224</sup>
334. During the 1930s, general school boards employed specialist itinerant agricultural instructors to supervise the

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<sup>217</sup> Ibid p191

<sup>218</sup> Ibid p16

<sup>219</sup> Ibid p16

<sup>220</sup> Ibid p173

<sup>221</sup> Ibid p180

<sup>222</sup> Ibid p181

<sup>223</sup> Ibid p176

<sup>224</sup> Ibid p175

teaching of elementary science and agriculture.<sup>225</sup> By 1938, boys in Forms I and II were being taught woodwork and metalwork by specialist teachers. Girls of similar age received instruction from specialist instructors in domestic subjects including cookery and hygiene.<sup>226</sup>

335. By contrast, students at some Native schools were able to build small model cottages during the 1930s with the combined efforts of teachers and parents. These were seen as being useful for home-training the Māori pupils. They were taught home management, home decoration, cooking and housecraft.<sup>227</sup>
336. General schools offered industrial training courses that were better resourced than their Native school counterparts, that involved higher levels of teacher expertise and that were much more technical in nature.<sup>228</sup>
337. Although Native schools continued to teach the ‘three Rs’, an increasing emphasis on manual training would develop over the years.<sup>229</sup>
338. At Makomako Native school, manual training took an increasingly prominent place in the school’s curriculum during the 1930s and 1940s.<sup>230</sup>
339. In 1933, the Inspector praised the cooking, sewing and housecraft being taught the girls and the woodwork being taught the boys at Parawera School. In the 1934 report, he commented on the domestic instruction and sewing while in 1935 he noted that agriculture was being successfully developed.<sup>231</sup>
340. At Rakaunui Native School, the teacher was advised to extend the handwork activities while at Kaharoa Native School it was reported that ploughing had been done in preparation for laying down a school garden.<sup>232</sup>

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<sup>225</sup> *ibid*  
<sup>226</sup> *ibid* p176  
<sup>227</sup> *ibid*  
<sup>228</sup> *ibid* p175-176  
<sup>229</sup> *ibid* p178  
<sup>230</sup> *ibid*  
<sup>231</sup> *ibid* p178  
<sup>232</sup> *ibid* p 179

### *Post-primary schooling*

341. Education officials emphasized the teaching of practical skills for Māori boys beyond the primary school level as opposed to academic endeavour.<sup>233</sup>
342. The intention was that the acquired manual skills would be taken back to the village and shared amongst the inhabitants.<sup>234</sup>
343. Consistently during the first several decades of the 20<sup>th</sup> century, Māori leaders and education officials called for more agricultural and trades training for Māori boys and domestic training for Māori girls at the secondary school level. At the time, Māori owned large areas of agricultural and pastoral lands.<sup>235</sup> However, the secondary schools involved were boarding schools and none of these were situated within Te Rohe Potae.
344. From 1909, the senior scholarships at the Māori boarding schools became 'industrial' scholarships or apprenticeships. University scholarships were suspended and not re-instated until 1920.<sup>236</sup>
345. By the 1920s, the Education Department was recording with satisfaction the wide variety of practical courses in Māori secondary schools. The curriculum for Māori girls was specifically designed to produce homemakers with sound domestic skills in needlework, dressmaking, cookery and general domestic duties, first aid and nursing, hygiene, care and rearing of infants and preparation of food for infants and the sick.<sup>237</sup>
346. When Native district high schools were established during the 1940s and 1950s, none of the 13 schools eventually opened were situated in Te Rohe Potae.<sup>238</sup>
347. Employment-related statistics showed a high proportion of Māori leaving school to work the land or in the trades. In 1949, 32% of Māori male school leavers listed farming as their likely destination and 23% listed the manual trades. The proportion of boys leaving for non-specified work rose

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<sup>233</sup> Ibid pp183-185

<sup>234</sup> Ibid p183

<sup>235</sup> Ibid p184

<sup>236</sup> Ibid p185

<sup>237</sup> Ibid p186

<sup>238</sup> Ibid p189

from 13% in 1949 to 19% in 1961 (compared with 5% for all boys).<sup>239</sup>

348. Māori were placed in the practical classes in Te Rohe Potae secondary schools while in general, Pakeha were placed in the academic classes.<sup>240</sup>
349. The ongoing academic struggles of Māori students in Te Rohe Potae secondary schools are a legacy of the emphasis on manual training their parents and grandparents were subjected to during their school years.
350. Disproportionately high numbers of Māori students are to be found in the lower ability classes in all Te Rohe Potae secondary schools. Their achievement levels in NCEA examinations are generally below the national average while the majority leave school with no passes at all.
351. The Board of Trustees and teachers recognise the urgency of lifting student achievement ... particularly the achievement of Māori students.<sup>241</sup>
352. The percentage of Māori students gaining qualifications at each level continues to be lower than that of students nationally and lower than students in schools of similar socio-economic status.<sup>242</sup>
353. Low reading levels have been identified amongst Year 9 and 10 Māori students. Numeracy levels are also low. The Board, Principal and staff are advised by ERO to set targets and achieve them in both areas of the curriculum.<sup>243</sup>
354. ERO informs the Board that the attendance of Māori students should be monitored and that it should monitor the rates of stand-downs, suspension and exclusions. It adds that these rates have decreased notably since the previous year.<sup>244</sup>
355. ERO recommends that the school reviews current programmes and staffing organization with a view to identifying further strategies to optimize literacy learning

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<sup>239</sup> Ibid p190

<sup>240</sup> Claimant evidence

<sup>241</sup> ERO report Otorohanga College 2010

<sup>242</sup> ERO Report Otorohanga College (Otorohanga College is a Decile 4 school)

<sup>243</sup> ERO Report on Otorohanga College 2010

<sup>244</sup> ERO Report on Taumarunui College 2003

opportunities for Year 9 and 10 Māori students who are reading below their chronological age.<sup>245</sup>

356. ERO is concerned that comprehensive information on Māori student achievement has not been collected in all major learning areas. The report points out that tests administered to the junior classes indicate that 40% of Māori students are experiencing difficulty in the area of literacy.<sup>246</sup>

### **Third Breach – Failure to Provide Secondary Education**

357. In breach of the Treaty principle of active protection and the right to development, the Crown failed to provide adequate access to secondary school education for Te Rohe Potae Māori .

#### **Particulars**

##### *Lack of Secondary Schools*

358. District high schools were rare before 1900, few Māori lived near general high schools and very few were awarded scholarships to attend them.<sup>247</sup>
359. In 1900, there were no secondary schools in Te Rohe Potae.<sup>248</sup>
360. At this time, all Māori secondary schools were boarding schools. Scholarships were awarded to those who passed the Fourth Standard of the Native Schools Code with credit.<sup>249</sup>
361. The Crown persisted with the view that the solution to the secondary schooling of Māori lay in the Church boarding schools which were located in Auckland and Hawkes Bay.<sup>250</sup> There were none in Te Rohe Potae.
362. Given that there were few primary or native schools in operation at the time, attendance by Te Rohe Potae students at the boarding schools was negligible.

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<sup>245</sup> ERO Report on Taumarunui College 2003

<sup>246</sup> ERO Report on Piopio College 2003

<sup>247</sup> Ibid p150, Note that there were only 56 Maori scholarships in 1901 and not 76 (as claimed by Christoffel).

<sup>248</sup> Ibid p162

<sup>249</sup> Ibid p151

<sup>250</sup> Ibid p150-151

363. The government provided some scholarships for Māori to attend the boarding schools. Between 1901 and 1918, the value of these scholarships increased negligibly.<sup>251</sup>
364. A district high school did not open in Te Rohe Potae until 1914.<sup>252</sup> This was in Te Kuiti where the roll was predominantly Pakeha. It consisted of a number of prefabricated rooms attached to the Te Kuiti primary school.
365. District high schools were secondary departments attached to larger primary schools.<sup>253</sup>
366. By the mid-1920s, just 5 district high schools had been opened inside the inquiry boundary.<sup>254</sup> These were located in Te Kuiti, Taumarunui, Otorohanga, Te Awamutu and Pio Pio. The new schools catered for pupils from Primer 1 to Form 7. A 6<sup>th</sup> district high school was opened in Raglan in 1938.
367. There was no district high school for Kawhia students until 1949.<sup>255</sup>
368. During the Great Depression, the number of Māori students on secondary school rolls halved from 533 to 247.<sup>256</sup> The bulk of the decline was with the number of private students without scholarships whose parents could not afford the fees. In addition, the number of scholarships fell as well.
369. The number of district high schools available to Māori was unsatisfactory given the large increase in the demand for post-primary education after fees were abolished for state schools in 1937.<sup>257</sup>
370. Up until 1940, less than 10% of the Māori population enrolled in secondary schools. In 1938, the Department of

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<sup>251</sup> Ibid p159

<sup>252</sup> Ibid p163

<sup>253</sup> Ibid

<sup>254</sup> Ibid p163. Although Christoffell includes Taumarunui within the list of district high schools within the inquiry boundary, this township is situated outside the inquiry boundary (see Wai 898, #6.2.5, p. 10 (Map 1)).

<sup>255</sup> Ibid p164

<sup>256</sup> Ibid p159

<sup>257</sup> Ibid p164, p165

Education reported that only 133 Māori were attending general high schools across the country.<sup>258</sup>

371. By 1960, there were 4 full secondary schools within Te Rohe Potae and 3 district high schools. Access to secondary schooling for the still rural based Māori student population remained difficult and the government did not alleviate this problem.<sup>259</sup>

*Low quality and irrelevant curriculum*

372. Not only did the government fail to provide a sufficient number of suitably placed secondary schools for Te Rohe Potae pupils, the quality and relevance of the education they received fettered educational success.
373. Few Māori passed the Proficiency Certificate up to the year of its abolition, 1937, so few Māori qualified for secondary schooling, including those in Te Rohe Potae.<sup>260</sup>
374. Furthermore, the district high schools were hamstrung by too few pupils, an inability to recruit qualified teachers and an inability to supply a range of subjects.<sup>261</sup>
375. The Crown insisted that the courses offered should focus on agriculture and housekeeping but the prevailing circumstances in the schools prevented this from happening at the time.<sup>262</sup>
376. For most of the 20<sup>th</sup> century, the few Māori attending secondary high schools were placed in practical classes but most ended their education as soon as they reached the minimum leaving age. Only a few Māori succeeded in gaining the minimum academic qualification of School Certificate. In 1960, less than 5% of Māori pupils left school with School Certificate compared with 30% of non-Māori.<sup>263</sup>
377. One of the reasons for Māori failure was their lack of ability in the English language. This problem has never been resolved by the Department of Education.<sup>264</sup>

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<sup>258</sup> Ibid p155

<sup>259</sup> Ibid p165

<sup>260</sup> Ibid p154-155

<sup>261</sup> Ibid

<sup>262</sup> Ibid p164

<sup>263</sup> Ibid p167

<sup>264</sup> Ibid p213

378. A large number of Māori students leave the school system as soon as they are able in order to avoid failure or the pain of failure.<sup>265</sup>
379. In 1981, non-Māori were four times more likely than Māori to leave school with higher qualifications.<sup>266</sup>
380. In a study of the data from the 2001 Census in respect of 16 iwi and their educational attainment, Te Rohe Potae Māori ranked second worst with regard to the proportion of the population with no qualification, and second worst with regard to the proportion with 6<sup>th</sup> Form Certificate or higher. This manifestation of failure in education as recent as ten years ago is also reflected in the low income and the low employment status of Te Rohe Potae Māori. They are ranked third worst and second worst of the 16 iwi in this study. Te Rohe Potae Māori are less qualified on average than Māori overall.<sup>267</sup>

#### **Fourth Breach – Systemic use of Corporal Punishment**

381. In breach of the Treaty principle of active protection and the right to development, the Crown gave tacit approval to the administration of corporal punishment in Native Schools.

#### **Particulars**

382. The use of corporal punishment on Māori pupils was systematically applied and widespread.<sup>268</sup>
383. The ban on the speaking of the Māori language was enforced with corporal punishment.<sup>269</sup>
384. The attempt to stamp out the Māori language intensified the use of corporal punishment in the 1930s and 1940s.<sup>270</sup>
385. Corporal punishment for speaking Māori contravened the Native Schools Code 1880 and the 1931 regulations for native schools.<sup>271</sup>

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<sup>265</sup> Ibid p213, p172

<sup>266</sup> Ibid p38

<sup>267</sup> Ibid p169-171, p38

<sup>268</sup> Ibid p118-120, 145-146

<sup>269</sup> Ibid p118-119, 145-146

<sup>270</sup> Ibid p118

<sup>271</sup> Ibid p119

386. No official regulation existed for the banning of the Māori language being spoken in schools.<sup>272</sup>
387. Although some Māori parents supported the ban on speaking the Māori language, they could not have conceived that its survival would come under threat as a consequence. They probably thought their children would become bi-lingual.<sup>273</sup>
388. School beginners as young as 5 or 6 years of age were often targeted for corporal punishment because they were not aware of the strict rule against the speaking of their mother tongue within school grounds.<sup>274</sup>
389. As a result of the nature and severity of the punishment Māori pupils received, their overall interest in schooling was impaired. This adversely affected performance levels and overall educational achievement.<sup>275</sup>
390. Despite the systemic use of corporal punishment, teachers failed to record its use despite the requirement that all incidences of corporal punishment be recorded in teacher log books.<sup>276</sup>
391. There were no particular regulations to govern how corporal punishment was to be applied and so the regularity and severity of the punishment meted out went largely unchecked. Inspectors who were charged tacitly with monitoring the rate and severity of corporal punishment had only the teacher log book as a reference point.<sup>277</sup>
392. Although education officials were aware of its prevalence, the Crown failed to monitor and/or enquire into the use of corporal punishment.
393. None of the relevant statutes included guidelines for the administration and application of corporal punishment. There was no statutory provision or regulation for controlling the types of instruments or devices used to deliver corporal punishment.

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<sup>272</sup> *ibid*

<sup>273</sup> *Ibid* p121

<sup>274</sup> Claimant evidence

<sup>275</sup> Claimant evidence

<sup>276</sup> *Ibid* p23

<sup>277</sup> *Ibid* p119 -120

394. Some teachers interpreted the statements put out by the Department on corporal punishment literally and in some cases set out to stamp out the use of the Māori language and to dominate the Māori pupil who resisted.<sup>278</sup>
395. Some teachers used unreasonable amounts of force when administering corporal punishment.<sup>279</sup>

### **Fifth Breach – Comparative Funding**

396. In breach of the Treaty principle of active protection, the Crown forced Māori parents to contribute a comparatively greater amount of financial and other resources towards the education of their children.

### **Particulars**

397. Under the 1867 Act, Māori communities were required to initiate the foundation of a new school and contribute to its establishment.<sup>280</sup>
398. A ‘considerable number’ of the Māori male inhabitants of a community had to petition the Colonial Secretary for the establishment of a school.<sup>281</sup>
399. A majority of local inhabitants had to agree to contribute to the establishment of the school and to its maintenance as well.<sup>282</sup>
400. Māori were also required to contribute at least an acre of land for the school site, half the cost of the buildings and maintenance, a quarter of the teacher’s salary and the price of school books.<sup>283</sup>
401. The demand for Māori land stood in marked contrast to the free education promised in the Education Act 1877 for children attending Board schools.<sup>284</sup>
402. It was not mandatory for Pakeha requesting a general school to provide the site.<sup>285</sup>

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<sup>278</sup> H Mead in The Foreword to Nga Kura Maori, Log Book evidence re Te Haroto Native School

<sup>279</sup> Claimant evidence

<sup>280</sup> Ibid

<sup>281</sup> Ibid

<sup>282</sup> Ibid

<sup>283</sup> Ibid

<sup>284</sup> Ibid p87

<sup>285</sup> Education Act 1877, sections 75, 76 and 80

403. The contribution requirements upon Māori parents for the establishment of native schools were mandatory.<sup>286</sup>
404. The onus on the government to provide grants for native schools was discretionary.<sup>287</sup>
405. The onerous requirements of the 1867 Act for the establishment of native schools deterred Rohe Potae parents and Māori communities from making application.
406. The requirement of a contribution from Māori families was a fatal flaw and it was eventually reduced and/or waived altogether.<sup>288</sup> However the standard amount of land demanded by the Crown increased from one acre to at least three acres in 1879.<sup>289</sup>
407. When Native Schools closed or were subject to usage variations, the original Māori owners received compensation for the land but not for any improvements to the land.<sup>290</sup>
408. The requirement remained for the Native school committees to clean the school, establish and maintain the grounds and provide fuel for heating. In later years when fuel became less accessible, this requirement became more and more problematic.<sup>291</sup>
409. Several schools were transferred to Board control within ten years of the school being established despite the contribution of Māori land for the school site.<sup>292</sup>
410. Māori parents were required to raise money for the purchase of school equipment, swimming pools, pianos, library books, sports gear, film projectors, duplicators and infant play equipment. This proved difficult for the poorer Māori communities.<sup>293</sup>
411. Māori communities were required to make contributions to their children's' education for many decades.<sup>294</sup>

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<sup>286</sup> Native Schools Act 1867, section 6

<sup>287</sup> Native Schools Act 1867, sections 8, 9, 13

<sup>288</sup> Ibid

<sup>289</sup> Ibid pp86, 87

<sup>290</sup> Ibid p212

<sup>291</sup> Ibid p20

<sup>292</sup> Ibid p86

<sup>293</sup> Ibid p89

<sup>294</sup> Ibid

### *Inadequate Government Assistance*

412. As a result of the Native Schools Act 1867, a sum of 4000 pounds was granted annually for Māori schooling.<sup>295</sup> The grant was inadequate for Māori educational requirements of the time.<sup>296</sup>
413. The government provided some scholarships for Māori to attend boarding schools. Between 1901 and 1918, the value of these scholarships increased negligibly.<sup>297</sup>
414. For some time until 1909, native school teachers were paid less than their general school counterparts.<sup>298</sup>
415. It was clear to the Education Department and to the Auckland Education Board that Māori parents were poor and yet insufficient financial assistance was given to Māori parents for the schooling of their children.<sup>299</sup> This was a situation that remained unchanged for decades.<sup>300</sup>
416. A fee had to be paid for attendance at district high schools up until 1937.
417. For many years, there was an emphasis on industrial training in native schools. However the equipment-related expense of teaching these courses meant that gardening, sewing, cooking and woodwork could not always be taught in many Native schools in Te Rohe Potae.<sup>301</sup>

### **Sixth Breach – The Conversion of Native Schools to Board Schools**

418. In breach of the Treaty principle of active protection, the Crown enabled Pakeha to convert Native schools to Board schools when their numbers exceeded those of Māori.

### **Particulars**

419. Under the Native Schools Code 1880, native schools would become general schools once sufficient progress had been made by all the Māori pupils in their use of

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<sup>295</sup> Ibid p20

<sup>296</sup> Ibid

<sup>297</sup> Ibid p159

<sup>298</sup> Ibid p110

<sup>299</sup> Ibid p202-203

<sup>300</sup> Ibid

<sup>301</sup> Ibid p180

English.<sup>302</sup> However this did not occur and the policy soon changed.

420. With the influx of Pakeha following the opening of the Rohe Potae, there was an urgent need for schools. Soon after the influx, pressure was placed by Pakeha settlers on the government to convert established Native schools. As a result, it was decided that native schools would become general schools once there was a majority of Pakeha students attending the school.<sup>303</sup>
421. There was no consultation with Māori over the conversion policy nor was it publicised.<sup>304</sup>
422. No particular provision was made for the learning requirements of former native school students who now found themselves in a general school.
423. The attendance of Māori students at general schools was not always well received. When outbreaks of illness occurred in general schools, the presence of the Māori students was often blamed for spread of the disease.<sup>305</sup>
424. Māori students formerly in native schools and now in general schools were subjected to racism and sometimes prevented from attending the general schools because of their race.<sup>306</sup>
425. Compensation was paid to the owners of any Māori land used for a converted native school but no compensation was paid for any improvements to the land.<sup>307</sup>
426. By 1909, 4 native schools within Te Rohe Potae had been converted and transferred to the Auckland Education Board (“the AEB”), all within a decade of being established. These were at Otorohanga, Te Kuiti, Kawhia and Hauaora (Taumarunui). A fifth school, Oparure, was transferred in 1923. At least 2 of these transfers took place in the face of protest from the Māori community.<sup>308</sup>
427. A native school was built in Kawhia in 1895, despite an AEB recommendation for a general school. By the early

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<sup>302</sup> Ibid p92-93

<sup>303</sup> Ibid p93

<sup>304</sup> Ibid

<sup>305</sup> Ibid p28

<sup>306</sup> Ibid p28-29

<sup>307</sup> Ibid

<sup>308</sup> Ibid

1900s, the school was overcrowded and so it was agreed that a general school be built, which opened in 1902. Almost immediately the new school proved to be too small and so the AEB sought funding from the Education Department for a new school and teacher's residence. The Department sent along an inspector to investigate and he recommended that the two schools in Kawhia be amalgamated on the grounds of efficiency.<sup>309</sup>

428. A meeting of the Kawhia Native School committee and the local Māori community passed a unanimous resolution objecting "very strongly" to the transfer but the school was transferred to the AEB nevertheless.<sup>310</sup>
429. Pakeha were in a small minority at Kawhia Native School and so it was transferred not because of a predominance of Pakeha pupils on the roll but because of an "emerging policy" namely that a native school and a general school should not co-exist in the same locality.
430. The conversion of the Hauaroa Native School (later called the Taumarunui School) was carried out despite strong opposition from the Māori community. The intervention of the Minister of Education completed the conversion in 1908 after the school had been open for six years. The grounds announced by the Minister were that the Pakeha numbers had exceeded Māori numbers and that native and general schools could not co-exist in the same locality.<sup>311</sup>
431. The head-teacher at Hauaroa Native School argued against conversion on the basis that the Māori children would be disadvantaged as they were not sufficiently advanced in English, but his plea failed.<sup>312</sup>
432. Otorohanga opened as a native school in 1890 to serve an area that was overwhelmingly Māori at the time. Increasing numbers of Pakeha began to move into the area and a conversion proposal was raised. Despite resistance from local Māori, Otorohanga Native School became a Board School in 1894.<sup>313</sup>

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<sup>309</sup> Ibid p94  
<sup>310</sup> Ibid p95  
<sup>311</sup> Ibid p97  
<sup>312</sup> Ibid p100  
<sup>313</sup> Ibid p55

433. As more and more Pakeha moved into Te Rohe Potae, the conversion of an ever increasing number of Native Schools became inevitable. Native schools that had been established with Māori effort and resources were taken over in order to reduce the cost of establishing general schools.<sup>314</sup>
434. The Native Schools became dominated by Pakeha pupils and Pakeha parents began to dominate school committees. With the withdrawal of the Native Schools Inspectorate and special Māori curriculum provisions, Māori pupils increasingly struggled in an already foreign and intimidating environment.
435. The conversion of native schools to general schools in circumstances where the Māori pupils had not yet acquired sufficiency in English was a significant impediment to their progress in education.

#### **Seventh Breach – Limiting the Native School Committees**

436. In breach of the Treaty principle of active protection and of good faith, the Crown limited the powers and responsibilities of the Native School Committees.

#### **Particulars**

437. The Native Schools Act 1867 granted the Native School Committees general management powers over their schools but the 1880 Native Schools Code gave the key management responsibilities to the head-teacher.<sup>315</sup>
438. The responsibilities of enforcing attendance, cleaning the school, maintaining the grounds, fundraising and providing firewood were left with the Native School Committees.<sup>316</sup>
439. Native School Committees were not involved in the recruitment and appointment of staff. By contrast, the Education Board consulted with the school committee in general schools before appointing a new teacher.<sup>317</sup>
440. There was no power for Native School Committees to expend funds on incidental expenses. They were not involved in preparing the budget. By contrast general

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<sup>314</sup> Ibid p110

<sup>315</sup> Ibid p89

<sup>316</sup> Ibid p89

<sup>317</sup> Ibid p90

school committees had responsibility for the school budget and could make decisions on a wide variety of matters associated with school operations and maintenance.<sup>318</sup>

441. Maintaining the native school grounds and buildings was a task that members of the Native School Committee carried out themselves whereas the committees of the general schools paid to have these jobs done from the operations grant. Native School Committees were denied access to the operations grant which was administered solely by the head-teacher.<sup>319</sup>
442. Native School Committees were expected to raise funds to purchase library books. Due to the financial hardship they faced, Native School Committees often requested that the Department buy the much needed library books in exchange for labour expended by them for school purposes.<sup>320</sup>
443. Other responsibilities enjoyed by general school committees which were denied Native School Committees included involvement in curriculum matters, staffing matters, finance and budgeting and attending to minor repairs and maintenance.<sup>321</sup>
444. In 1957, 90 years after the passing of the Native Schools Act 1867, Māori School Committees were given the financial and other formal responsibilities enjoyed by general school committees.<sup>322</sup>

### **Eighth Breach – Poor Quality Teachers**

445. In breach of the Treaty principle of active protection and of good faith, the Crown failed to ensure the quality of teachers in native schools.

### **Particulars**

446. Many factors contributed to the difficulties faced with recruiting quality teachers to native schools. The relative isolation of many of the schools was one of these

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<sup>318</sup> Ibid p90

<sup>319</sup> Ibid p90

<sup>320</sup> Ibid p90

<sup>321</sup> Ibid p92

<sup>322</sup> Ibid p92

factors.<sup>323</sup> The absence of electricity and the vulnerability to disease were other negative factors.<sup>324</sup>

447. In particular, Education Department policy for staffing and salaries negatively affected teacher interest in native schools. With salary levels tied to pupil numbers, teacher tenure and salary levels fluctuated with roll numbers.<sup>325</sup>
448. The size of the roll influenced the teachers' salary level and this factor encouraged teachers to move on to larger schools as soon as their contracts were up. This often left schools without a teacher or with difficulties with recruitment.<sup>326</sup>
449. At times, schools were forced to close because of the disruption.<sup>327</sup> Te Koupa native school had to close for most of 1909 because there was no teacher. On one occasion, Rakaunui native school closed in 1915 and did not open until the following year. The school closed again in 1919 and in 1923 because of a lack of a teacher.<sup>328</sup>
450. There was a high turnover of teachers in Te Rohe Potae native schools.<sup>329</sup> In one year, Rakaunui School had 3 teachers and 4 head teachers in just 7 months, during 1938 and 1939.<sup>330</sup> Taharoa School had 7 head teachers between 1948 and 1958. World War II exacerbated the problem with teacher turnover in native schools.
451. The teacher turnover disrupted the pupil's education.<sup>331</sup>
452. In 1951, teachers in Māori schools lost the benefits they enjoyed with travel and removal expenses when they changed schools.<sup>332</sup> This led to greater disinterest amongst the teaching profession.
453. Inspector reports reveal the varying quality of the teachers.<sup>333</sup>

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<sup>323</sup> Ibid p200

<sup>324</sup> Ibid p201

<sup>325</sup> Ibid p201

<sup>326</sup> Ibid p201

<sup>327</sup> Ibid p199

<sup>328</sup> Ibid

<sup>329</sup> Ibid p208

<sup>330</sup> Ibid p200

<sup>331</sup> Ibid p199

<sup>332</sup> Ibid 201

<sup>333</sup> Ibid p202

454. They reveal that the quality of education in Te Rohe Potae schools was mediocre overall and occasionally poor.<sup>334</sup>
455. The Native Schools Act specifically provided for Māori teachers however not many were appointed. In 1912, only 3 of the 104 native schools had Māori head teachers. In 1943, the 156 native schools had 4 Māori head teachers, 43 assistant teachers and 97 junior assistants.<sup>335</sup>

### **Ninth Breach – Failure to Ensure Compulsory Attendance**

456. In breach of the Treaty principle of active protection, the Crown failed to ensure that Māori pupils attended school

#### **Particulars**

457. Under the Native Schools Act 1858, schools attendance was not made compulsory.
458. By 1880, all mission schools in Te Rohe Potae had closed for want of pupils.<sup>336</sup>
459. The Native Schools Act 1867 did not contain a compulsory attendance provision.
460. Under the School Attendance Act 1901, the compulsory attendance provisions were addressed and attendance was made compulsory for Māori but only for those attending general schools.<sup>337</sup>
461. In 1904, Raorao Native School closed after less than six years due to what was claimed as 'poor attendance' but which was probably due to the pupils being required to help with the harvesting of crops.
462. It was not until 1907 that the compulsion provisions were applied to both native and general schools.<sup>338</sup>
463. In 1908, Maungaorongo opened and closed after three years due to lack of pupils.<sup>339</sup>

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<sup>334</sup> Ibid p209

<sup>335</sup> Ibid p30

<sup>336</sup> Ibid p52

<sup>337</sup> Ibid p27

<sup>338</sup> Ibid

<sup>339</sup> Ibid p59

464. The growing Pakeha population demanded education for their children and they enrolled their children in existing native schools eventually taking them over when their numbers exceeded the Māori. The Māori pupils were probably left to their own resources as the Pakeha children monopolized the attention of the Pakeha teachers resulting in Māori absenteeism and exiting schooling at a young age.<sup>340</sup>

### **Prejudice**

465. The Claimants say they have been, are and are likely to continue 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 set out in the statement of claim.

466. The Claimants further state that 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.

467. By virtue of the foregoing particulars, the Claimants have been prejudicially affected in the following ways:

- a. The educational aspirations of most Māori have not been realised;
- b. The education system has and continues to assimilate Māori children;
- c. As a result of assimilation, inter alia, Māori children cannot speak the Māori language, they do not know their traditional history and their identity has been compromised;
- d. There has been an emphasis on industrial training in the curriculum taught to Māori students and this has limited their world view and educational experiences. It has also defined and restricted their vocational aspirations and suitability;
- e. The Crown has failed to provide adequate access to secondary school education for Te Rohe Potae

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<sup>340</sup> Claimant evidence

Māori, thus impeding their learning and their vocational options;

- f. The Crown provided tacit approval to the administration of corporal punishment in native and general schools thus contributing to a lower level of self-esteem among Māori students and impeding their educational progress;
- g. The Crown forced Māori parents to contribute a comparatively greater amount of financial and other resources towards the education of their children during a time and period when they could ill-afford to do so;
- h. The Crown enabled Pakeha to convert native schools to Board schools when their numbers exceeded those of Māori, despite the effort and expense Māori parents had put into the establishment and growth of the native schools so involved; and
- i. The Crown limited the powers and responsibilities of the Native School Committees.

## **RELIEF**

468. The Claimants seek the following relief:

### *General Relief*

- a. Findings that the Crown should make a full, public and unreserved apology for those actions and omissions that are found to be in breach of the Treaty of Waitangi.
- b. Findings that the Crown failed to adopt measures to protect the Claimants' ancestral land base so as to ensure that the Claimants retained sufficient land for their present and future needs.
- c. Findings that the Crown should pay compensation to the Claimants for the breaches of the Treaty of Waitangi outlined in this statement of claim in an amount which appropriately recognises the losses suffered by the Claimants as a consequence of the Crown's breaches of the Treaty.

- d. Findings (including binding recommendations as appropriate) that the Crown return to the Claimants sufficient land, resources and taonga which appropriately recognises the losses suffered by the Claimants as a consequence of the Crown's breaches of the Treaty of Waitangi.
- e. Findings that the Crown provide the Claimants with sufficient cultural redress which appropriately recognises the losses suffered by the Claimants as a consequence of the Crown's breaches of the Treaty of Waitangi.

*For the loss of Wāhi Tapu*

- f. Findings that the Crown failed to adopt measures to protect the Claimants' wāhi tapu.
- g. Formal recognition of the Claimants' wāhi tapu.

*For the Taking of Lands for Public Works Purposes*

- h. Findings that the Crown compulsorily acquired the Claimants' lands without adequate consultation and compensation.
- i. Compensation for loss of lands and resources, and the ongoing harm this has had on the Claimants.
- j. Compensation for the inadequate exchange of the Claimants lands and resources at Orahiri 1 section 17B.

*For Lands Alienated and Fragmented through Crown Purchasing*

- k. Findings that the Crown adopted a purchasing policy and legislative framework that deliberately alienated the Claimants from their lands and resources without adequate consultation or compensation.
- l. Findings that the Crown adopted unfair purchasing practices and failed to act with good faith when doing so.

- m. Findings that the Crown failed to adequately survey the Claimants' ancestral land interests prior to purchasing.

*For Lands Alienated and Fragmented through the Actions of the Native Land Court*

- n. Findings that the Crown enacted Native Land Court legislation that caused the individualisation of Māori customary title and subsequent loss of the Claimants' lands.

*For Lands Alienated Through Private Purchasing Mechanisms*

- o. Findings that the Crown enacted legislation that enabled and encouraged private purchases of the Claimants' lands.

*For the Mismanagement of Lands by the Māori Trustee*

- p. Compensation for the harm done to the owners for the time the owners were denied management of their lands at Te Kauri 2K1.

*For Land Interests Lost Through the Uneconomic Shares Conversion Scheme*

- q. Findings that the uneconomic shares conversion scheme, implemented by the Crown pursuant to the Māori Affairs Act 1953, prejudicially effected the Claimants, causing them economic and cultural loss through the alienation of their share interests.
- r. Compensation for shareholder interests lost through the uneconomic interests conversion scheme.

*For Land Europeanised under the Conversion Scheme*

- s. Findings that the Europeanisation of land pursuant to the Māori Affairs Amendment Act 1967, prejudicially effected the Claimants, in that their lands were converted to general land without their knowledge or consent.

- t. Compensation for harm incurred by the owners of Te Kauri 2K1 due to the Europeanisation of their lands.

*For Lands that have become Landlocked*

- u. Findings that the partitioning and sale of land led to blocks being landlocked.
- v. Construction of roads and the establishment of easements to provide access to the landlocked blocks raised in this claim and the ongoing maintenance of those roads at the cost of the Crown.
- w. Compensation for the years the land has been inaccessible to the Claimants because the blocks were landlocked.
- x. Findings that the Crown allowed Māori land to be landlocked, inhibiting economic development of the land as farms and preventing Māori from gaining employment and income from the land they owned.
- y. Compensation for the economic development that was unable to take place during the time period the Claimants lands have been landlocked.

*For the Maladministration of Māori Education*

- z. A formal apology from the Crown for the poor state of health the Māori language exists in today, for the loss of cultural knowledge that has occurred as a result of assimilation and for the overall failure of the Crown to properly administer Māori education.
- aa. Findings that the Crown allow Māori to administer and develop their own education system autonomously and without impediment from the Crown.
- bb. Findings that the Crown adequately fund the training of teachers for the purpose of partaking as teachers in a Māori education system.
- cc. Findings that adequate redress is provided by the Crown to properly fund Māori education.

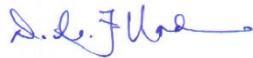
469. The Claimants also seek recommendations that the Tribunal considers appropriate in the circumstances.

**CONCLUDING MATTERS**

470. The Claimants agree to work collaboratively with Te Hauauru Claims Collective during the next phases of the claims process.

471. The Claimants seek leave to file further particulars to this claim either by way of further amendments to the statement of claim or by way of claimant evidence to include particular local issues once additional research into the same has been completed.

Dated at Auckland this 9<sup>th</sup> day of December 2011



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Darrell Naden  
Counsel Acting



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Emma Whiley