

**IN THE WAITANGI TRIBUNAL
TE ROHE POTAE INQUIRY DISTRICT**

WAI 1447

IN THE MATTER of the Treaty of Waitangi Act 1975

A N D

IN THE MATTER of Te Rohe Potae Inquiry (Wai 898)

IN THE MATTER of a claim by Ihaia Corbet Te Akau, Dominic Otimi and Edwin Ashford on behalf of themselves and Ngati Hinemihi (Wai 1447)

**AMENDED STATEMENT OF CLAIM
Dated 9 December 2011**

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MAY IT PLEASE THE TRIBUNAL:

1. INTRODUCTION

- 1.1 This Amended Statement of Claim is filed by Ihaia Corbet Te Akau, Dominic Otimi and Edwin Ashford on behalf of themselves and Ngati Hinemihi ("the Claimants").
- 1.2 This Amended Statement of Claim should be read in conjunction with the original Wai 1447 Statement of Claim, filed by the Claimants on 8 October 2007.
- 1.3 This Amended Statement of Claim relates to the interests of the Claimants within the Te Rohe Potae District Inquiry.

2. THE CLAIMANTS

- 2.1 The Claimants are of Māori descent.¹
- 2.2 The Claimants are descendents of Hinemihi, the founding ancestor of Ngati Hinemihi, a hapu of Ngati Tuwharetoa.²
- 2.3 Ngati Hinemihi exercised, and continues to exercise, mana and tino rangatiratanga over its ancestral lands. No other hapu could speak or make decisions for Ngati Hinemihi without first being authorised by Ngati Hinemihi to do so.³
- 2.4 Ngati Hinemihi operated their affairs independently from other hapu in accordance with tikanga and occupied the lands within their rohe.⁴
- 2.5 As at 1840, Ngati Hinemihi exercised mana and tino rangatiratanga over the Ngati Hinemihi rohe.⁵

3. THE CLAIM AREA / ROHE

- 3.1 The core lands of Ngati Hinemihi within Te Rohe Potae Inquiry District are included within what is now known as the Rangitoto Tuhua Block.⁶

¹ Claimant evidence

² Claimant evidence

³ Claimant evidence

⁴ Claimant evidence

⁵ Claimant evidence

- 3.2 The Ngati Hinemihi rohe includes areas that overlap with other Ngati Tuwharetoa hapu interests including Ngati Manunui and other tribal interests such as, for example, those of Whanganui and Ngati Maniapoto.
- 3.3 Ngati Hinemihi claim mana atua, mana whenua, mana tangata and mana motuake over and strong whakapapa connections with the upper reaches of the Whanganui River, including all its tributaries within the rohe of Ngati Hinemihi in Te Rohe Potae including:
- (a) Waiongaonga Stream;
 - (b) Tutaeti Stream; and
 - (c) Taringamotu River.

4. THE CLAIM

- 4.1 The Crown, in breach of its Treaty of Waitangi obligations:
- (a) Introduced the Native Land Court system, which failed to recognise the customary interests of Ngati Hinemihi and their core lands at Rangitoto Tuhua;
 - (b) Failed to ensure Ngati Hinemihi retained sufficient lands in the Rangitoto Tuhua blocks for their present and future needs;
 - (c) Established the Tongariro Power Development Scheme without consulting with or gaining the consent of Ngati Hinemihi;
 - (d) Failed to protect Ngati Hinemihi from the adverse effects of the Tongariro Power Development Scheme on their Awa;
 - (e) Failed to protect Ngati Hinemihi rivers and waterways from erosion and pollution; and
 - (f) Failed to protect Ngati Hinemihi's other taonga including its mahinga kai and fisheries.

⁶ Claimant evidence

5. TREATY OF WAITANGI

5.1 By the Treaty of Waitangi, the Crown:

- (a) Confirmed and guaranteed to Ngati Hinemihi tino rangatiratanga including the full, exclusive and undisturbed possession of their lands, estates, forests, fisheries, other properties, rivers, waterways and taonga;
- (b) Promised to protect their rights guaranteed by the Treaty and perform their obligations arising out of the Treaty; and
- (c) Extended to Ngati Hinemihi all the rights and privileges of British subjects.

6. DUTIES

6.1 The Crown had and continues to have duties to recognise and actively protect Māori rights and interests under the Treaty and its principles.

6.2 As a consequence the Crown was and is generally required to:

- (a) Ensure that Ngati Hinemihi retain their lands, estates, forests, fisheries, other properties and taonga so long as it is the Claimants' desire to do so;
- (b) Recognise and protect Ngati Hinemihi's lore, customs, cultural and spiritual heritage;
- (c) Recognise and protect Ngati Hinemihi's tino rangatiratanga;
- (d) Ensure that Ngati Hinemihi exercise tino rangatiratanga, including the right to possess, manage and control all of their property and resources in accordance with Ngati Hinemihi lore, cultural preferences and customs;
- (e) Ensure Ngati Hinemihi were and are provided with the means to develop, exploit and manage their resources in a manner consistent with Ngati Hinemihi's cultural preferences; and

- (f) Ensure that the impact upon Ngati Hinemihi of Government action and regulation was and is consistent with the Treaty and its principles and actively protect Māori and, in particular, Ngati Hinemihi's rangatiratanga, customs, law and properties.

6.3 The principles of the Treaty include its terms.

7. FIRST CAUSE OF ACTION: ROHE POTAE COMPACT AND CONSTITUTIONAL ISSUES

7.1 The Claimants adopt the generic pleadings with respect to the Rohe Potae Compact and Constitutional Issues.

8. SECOND CAUSE OF ACTION: NATIVE LAND COURT

8.1 The Claimants adopt the generic pleadings with respect to the Native Land Court and say further:

Particulars:

8.2 The Crown, in breach of its duties under the Treaty, failed to protect Te Rohe Potae customary land.⁷

8.3 As a result, the Crown undermined attempts by tupuna to maintain customary authority or to develop alternative forms of Māori customary authority over land and resources, particularly over the Rangitoto Tuhua block.⁸

9. THIRD CAUSE OF ACTION: CROWN PURCHASING AND PRIVATE PURCHASING

9.1 The Claimants adopt the generic pleadings on Crown Purchasing and related Private Purchasing issues and say further:

Particulars:

9.2 The following blocks were alienated within the Rangitoto Tuhua block from 1840 to 2010:⁹

⁷ Claimant evidence

⁸ Claimant evidence

Description	Original Area at 1840 (acres)	Percentage of Māori land at 1840	Area at 2010 (acres)	Percentage of Māori land at 2010
Rangitoto Tuhua 2 Pukuweka	2744.7	100.0%	266.6	9.7%
Rangitoto Tuhua 3 Taraunui	10070.6	100.0%	0.0	0.0%
Rangitoto Tuhua 4 Horokio	1784.9	100.0%	0.0	0.0%
Rangitoto Tuhua 5 Ngararanui	255.2	100.0%	0.0	0.0%
Rangitoto Tuhua 6 Matewaia	235.9	100.0%	0.0	0.0%
Rangitoto Tuhua 7	89.1	100.0%	12.9	14.5%
Rangitoto Tuhua 8	299.9	100.0%	0.0	0.0%
Rangitoto Tuhua 9 Potakataka	12437.8	100.0%	0.0	0.0%
Rangitoto Tuhua 10 Potakataka	6056.7	100.0%	0.0	0.0%
Rangitoto Tuhua 21 Ngairo	7208.3	100.0%	438.1	6.1%
Rangitoto Tuhua 24 Ongarahu	970.5	100.0%	0.2	0.0%
Rangitoto Tuhua 25 Raepahu	10086.7	100.0%	0.0	0.0%
Rangitoto Tuhua 26 Tarapounamu	12680.4	100.0%	0.8	0.0%
Rangitoto Tuhua 27 Haupapa	93.6	100.0%	0.0	0.0%
Rangitoto Tuhua 28 Kareanui	927.5	100.0%	1.1	0.1%

⁹ Tutahanga Douglas, Craig Innes and James Mitchell, *Alienation of Māori land within Te Rohe Potae inquiry district 1840-2010: A quantitative study*, Waitangi Tribunal, June 2010, (Wai 898, #A21)

Rangitoto Tuhua 29 Hikurangi	5807.7	100.0%	58.3	1.0%
Rangitoto Tuhua 30 Putere	738.9	100.0%	0.0	0.0%
Rangitoto Tuhua 31	1549.4	100.0%	0.6	0.0%
Rangitoto Tuhua 31 Tirakau	1442.1	100.0%	0.0	0.0%
Rangitoto Tuhua 33 Otewa	2137.1	100.0%	356.3	16.7%
Rangitoto Tuhua 34 Rewarewa	868.3	100.0%	1.0	0.1%
Rangitoto Tuhua 35 Otuaroa	30297.2	100.0%	1276.0	4.2%
Rangitoto Tuhua 36 Te Tiroa	30087.8	100.0%	27628.3	91.8%
Rangitoto Tuhua 37 Te Pahi	5519.3	100.0%	3482.2	63.1%
Rangitoto Tuhua 38 Rangiahia	13239.1	100.0%	32.7	0.2%
Rangitoto Tuhua 41 Te Ana Kinekine	621.2	100.0%	0.0	0.0%
Rangitoto Tuhua 46	1002.4	100.0%	0.0	0.0%
Rangitoto Tuhua 47	3028.0	100.0%	0.0	0.0%
Rangitoto Tuhua 41 Te Ana Kinekine	562.3	100.0%	0.0	0.0%
Rangitoto Tuhua 50 Mahaukura	6150.2	100.0%	0.0	0.0%
Rangitoto Tuhua 51	3007.1	100.0%	0.0	0.0%
Rangitoto Tuhua 52 Hikurangi	9072.0	100.0%	658.7	7.3%
Rangitoto Tuhua 53	2079.3	100.0%	0.0	0.0%
Rangitoto Tuhua 54	2274.7	100.0%	1334.2	58.7%

Rangitoto Tuhua 55 Aurupu	1620.9	100.0%	243.1	15.0%
Rangitoto Tuhua 56	1993.6	100.0%	0.0	0.0%
Rangitoto Tuhua 57	7326.1	100.0%	0.0	0.0%
Rangitoto Tuhua 58 Whatitokarua	21176.1	100.0%	320.9	1.5%
Rangitoto Tuhua 60 Pukepoto	11403.9	100.0%	2200.4	19.3%
Rangitoto Tuhua 61 Puhanga	29952.2	100.0%	43.0	0.1%
Rangitoto Tuhua 62	3030.3	100.0%	0.0	0.0%
Rangitoto Tuhua 63 Pakaumanu	1527.7	100.0%	0.0	0.0%
Rangitoto Tuhua 64 Kaingaika	2954.8	100.0%	17.5	0.6%
Rangitoto Tuhua 65 Tapuiwahine	4961.4	100.0%	0.0	0.0%
Rangitoto Tuhua 66 Ngapuketuroa	10365.3	100.0%	2382.9	23.0%
Rangitoto Tuhua 67 Huhutirau	10324.4	100.0%	1351.1	13.1%
Rangitoto Tuhua 68 Puketutu	35434.3	100.0%	1269.3	3.6%
Rangitoto Tuhua 69 Whawharoa	730.5	100.0%	0.0	0.0%
Rangitoto Tuhua 70 Te Aharoa	2410.3	100.0%	418.7	17.4%
Rangitoto Tuhua 71 Te Tawai	1508.3	100.0%	0.0	0.0%
Rangitoto Tuhua 72 Otamati	18820.6	100.0%	0.2	0.0%
Rangitoto Tuhua 73 Otamakahi	1489.6	100.0%	785.4	52.7%

Rangitoto Tuhua 74 Te Uranga	16295.5	100.0%	6679.1	41.0%
Rangitoto Tuhua 75	6485.1	100.0%	0.0	0.0%
Rangitoto Tuhua 76 Te Rongoroa	8707.3	100.0%	5118.6	58.8%
Rangitoto Tuhua 77 Tangitu	47715.1	100.0%	2098.1	4.4%
Rangitoto Tuhua 78	8328.7	100.0%	4276.9	51.4%
Rangitoto Tuhua 79 Te Tapuwae	8554.0	100.0%	0.0	0.0%
Rangitoto Tuhua 80 Te Tarata	7759.2	100.0%	3394.5	43.7%

10. FOURTH CAUSE OF ACTION: RAILWAYS

10.1 The Claimants adopt the generic pleadings on the Railways and say further:

Particulars:

10.2 In 1899 and 1902, the Crown made sizeable takings of the Rangitoto Tuhua Block for construction of the railway without consultation with Te Rohe Potae Māori.¹⁰ The following blocks were involved:

- (a) On 3 June 1889, land was taken at the Rangitoto Tuhua Block (Mokau and Poro-o-tarao sections), an area of 206a 1r 00p;¹¹ and
- (b) On 31 October 1902, land was taken at the Rangitoto Tuhua Block (Ohinemoa and Onguhue sections), an area of 417a 3r 37.5p.¹²

¹⁰ Philip Cleaver & Jonathan Sarich, *Turongo: The North Island Main Trunk Railway and the Rohe Potae, 1870-2008*, November 2009, (Wai 898, #A20), p 149

¹¹ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 148

¹² Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 148

10.3 From 1903 to 1990, the Crown made further land takings for railway purposes, depriving Te Rohe Potae Māori of land that had an economic value, containing stone resources or being located in or near urban areas.¹³ The following blocks were expropriated by the Crown from 1903 to 1990:

- (a) In 1904, Rangitoto Tuhua Block, an area of 11a 0r 6p and 5a 1r 39p. In 1904 the Native Land Court ordered compensations of £33 6s 8d and £16 13s 4d to be paid for the areas;¹⁴
- (b) In 1905, Rangitoto Tuhua Block, an area of 14a 1r 31p, 2a 1r 3p;¹⁵
- (c) In 1913, Rangitoto Tuhua 68F3, an area of 1a 0r 31.5p, Rangitoto Tuhua 68M, an area of 1a 1r 27.2p and Rangitoto Tuhua 68G, an area of 8a 1r 33.8p. In 1915, the Native Land Court ordered compensation to be paid of £57 for the three areas;¹⁶
- (d) In 1938, Rangitoto Tuhua 68M 2B 3B, an area of 3a 2r 20.7p;¹⁷
- (e) In 1944, Rangitoto Tuhua 68G 2C, an area of 7a 1r 00p;¹⁸
- (f) In 1946, Rangitoto Tuhua 68G 2A1, an area of 1a 1r 32.2p;¹⁹
- (g) In 1948, Rangitoto Tuhua 68G 2A1, an area of 0a 0r 36.9p, Rangitoto Tuhua 68G 2D 2B1, an area of 1a 0r 33.1p, and Rangitoto Tuhua 68G 2D2, an area of 0a 2r 14p;²⁰
- (h) In 1953, Rangitoto Tuhua 68H 2B 2C, an area of 0a 1r 21.5p. Compensation of 10s was paid to the Māori owners;²¹
- (i) In 1976, Rangitoto Tuhua 55B 2B 1A, an area of 1a 1r 8.3p. Compensation of \$50 was paid to the Kotahitanga Church Building Society;²²

¹³ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 164

¹⁴ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 161

¹⁵ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 161

¹⁶ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 161

¹⁷ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 162

¹⁸ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 162

¹⁹ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 162

²⁰ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 162

²¹ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 162

- (j) In 1980, Rangitoto Tuhua 55B 2B2, an area of 0a 3r 3p. Compensation of \$32 was paid to Areka Phillips;²³
- (k) In 1984, Rangitoto Tuhua 68K1, an area of 0a 0r 28.9p, Rangitoto Tuhua 68K5A, an area of 0a 0r 6.3p and Rangitoto Tuhua 68K5B, an area of 0a 0r 20.8p. Compensation of \$390 was paid for the three areas.²⁴
- (l) In 1985, parts of Rangitoto Tuhua 68l 2A 2B3, an area of 1a 1r 4.9p, Rangitoto Tuhua 68l 2A 2B4, an area of 0a 0r 12.8p, and Rangitoto Tuhua 68l 2A 2A, an area of 0a 0r 29.1p. This land is owned by Muri Aroha Farms Limited. Compensation details are not available;²⁵
- (m) In 1985, Rangitoto Tuhua 68K1, an area of 0a 0r 1.1p. This land is owned by Tame Ngahiwi Paiwaha Kawe. Compensation details are not available;²⁶
- (n) In 1986, Rangitoto Tuhua 68C 1A, an area of 5a 1r 28.1p and Rangitoto Tuhua 68C 1B. This land is owned by Puketutu Farms Limited. Land areas were exchanged in lieu of compensation for the land.²⁷

Particulars: Disposing of Surplus Land

- 10.4 Before 1980, the Crown imposed a process of disposing surplus land in accordance with specific legislative provisions without first offering this land to previous owners.²⁸ The table below shows Te Rohe Potae land that was disposed of.²⁹

²² Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 162

²³ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 162

²⁴ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 163

²⁵ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 163

²⁶ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 163

²⁷ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 163

²⁸ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), pp 180, 186

²⁹ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 180

Year	Description	Area	Details
1967	Sec 3 Blk V Mapara SD	1a 1r 19.7p	Located at Kopaki, this land was formerly part of an area of Rangitoto Tuhua 68M 2B 3B, taken in 1938. In 1967 this land was declared Crown land and sold to the Waitomo County Council. ³⁰
1872	Sec 8 Blk V Marapara SD	1a 2r 5.2p	Located at Kopaki, this land was formerly part of an area of Rangitoto Tuhua 68M 2B 3B, taken in 1938. In 1972, the land was declared Crown land and sold to a European. ³¹
1979	Part Whenuatupu Ohinemoa 1	4a 3r 00p 4a 0r 25p	Previously part of Rangitoto Tuhua Block, this was the Waimiha quarry taken in 1903. At some stage a road was built through the quarry, reducing the area held by Railways and dividing it into two portions. In 1979 the land was declared Crown land and purchased by the Māori Affairs Department for land development purposes. ³²

10.5 In accordance with the Public Works Act 1981, the New Zealand Railway Company made steps to dispose of land at Mangapehi in 1987. This land consisted of an area of 7a 1r, part of Rangitoto Tuhua 68G 2C.³³ This land had been taken from Te Rohe Potae Māori owners in 1944.³⁴

³⁰ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 180

³¹ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 180

³² Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 180

³³ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), pp 266 - 267

³⁴ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 267

10.6 The lack of flexibility shown in respect of the amount of time that Māori owners were given to raise funds to conclude the purchase meant that the offer was withdrawn before there was time to raise the funds to complete the purchase.³⁵

10.7 Of note, the disposal of surplus railway lands was carried out without any protection of Māori interests relating to historical Treaty of Waitangi claims.³⁶

11. FIFTH CAUSE OF ACTION: PUBLIC WORKS TAKINGS

11.1 The Claimants adopt the generic pleadings on Public Works Takings and say further:

Particulars:

11.2 Under the Native Land Court Act 1894 and the Public Works Act 1894, the Crown issued warrants for expropriating Te Rohe Potae Māori land for roads. These warrants were issued until 1910 under the Public Works Act 1894, 1905, and 1908.³⁷ The following table illustrates the blocks involved:³⁸

Year	Date of Warrant	Block
1904	7 November	Rangitoto Tuhua 66
1907	3 December	Rangitoto Tuhua 77
1908	24 August	Rangitoto Tuhua 77
1909	22 July	Rangitoto Tuhua 64, Te Kuiti
1909	26 August	Rangitoto Tuhua 29, Tokani
1909	4 December	Rangitoto Tuhua 27, 29 & 31
1909	6 December	Rangitoto Tuhua 26, 35, 68 & 69, Te Kuiti

11.3 From 1910, the Crown made takings under the Native Land Act 1909. Frequently these takings were made without paying compensation.³⁹ The following were takings under sections 388 and 389 Native Land Act 1909:⁴⁰

³⁵ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), pp 269, 273

³⁶ Cleaver & Sarich *Turongo: The North Island Main Trunk Railway*, (Wai 898, #A20), p 274

³⁷ David Alexander, *Public works and other Takings in Te Rohe Potae District*, A Report Commissioned by the Crown Forestry Rental Trust, December 2009, (Wai 898, #A63) p 117

³⁸ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), pp 119 - 120

³⁹ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), p 126

Year	Date of Taking	Block
1911	31 May	Rangitoto Tuhua 68
1912	7 June	Rangitoto Tuhua 34, 35 & 61
1912	7 June	Rangitoto Tuhua 61
1912	19 July	Rangitoto Tuhua 68
1912	26 August	Rangitoto Tuhua 60
1912	13 December	Rangitoto Tuhua 77
1913	4 March	Rangitoto Tuhua 77
1913	25 July	Rangitoto Tuhua 61
1913	1 August	Rangitoto Tuhua 33
1913	15 September	Rangitoto Tuhua 72
1913	16 October	Rangitoto Tuhua 68
1913	24 November	Rangitoto Tuhua 69, 70
1913	5 December	Rangitoto Tuhua 78
1913	15 December	Rangitoto Tuhua 26, 68, 79
1914	21 February	Rangitoto Tuhua 68
1914	24 February	Rangitoto Tuhua 60
1914	27 August	Rangitoto Tuhua 68
1914	21 September	Rangitoto Tuhua 68
1914	17 November	Rangitoto Tuhua 61
1914	1 December	Rangitoto Tuhua 61
1915	16 January	Rangitoto Tuhua 60
1915	29 March	Rangitoto Tuhua 57, 61
1915	7 April	Rangitoto Tuhua 72
1915	27 October	Rangitoto Tuhua 77, 79
1915	20 November	Rangitoto Tuhua 68
1915	23 November	Rangitoto Tuhua 26, 60, 68, 77, 79
1916	22 February	Rangitoto Tuhua 61
1918	23 October	Rangitoto Tuhua 52, 55
1920	23 July	Rangitoto Tuhua 78
1920	12 October	Rangitoto Tuhua 57

⁴⁰ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), pp 124 - 125

1922	11 January	Rangitoto Tuhua 78
1923	6 January	Rangitoto Tuhua 68
1923	6 September	Rangitoto Tuhua 29
1927	11 March	Rangitoto Tuhua 68
1927	7 June	Rangitoto Tuhua 77

11.4 An additional consequence of taking land for roads for Te Rohe Potae Māori was that the Native Land Act 1909 did not require "the roads to be fenced (unless the road cut through a fence that existed at the time of construction)."⁴¹ As a result, a Petition was made to Parliament in 1929 concerning the land from Rangitoto Tuhua 77 for the Waimihia-Ongarue Road.⁴² The Crown response to this "petition avoided discussion of any obligation to assist the Māori owners, advising Parliament only that the taking under the Native Land Act complied with the circumstances set out in the legislation."⁴³

11.5 Section 240 of the Native Land Act 1909 allowed the Māori Land Board to arrange for the land to be suitable for settlement by subdividing and roading it. The Crown did not pay any compensation to Te Rohe Potae Māori for this land. Any compensation to Te Rohe Potae Māori was in the "form of improved value of farm sections being made fit for sale."⁴⁴ The following blocks were affected by this process:⁴⁵

- (a) Rangitoto Tuhua 60; and
- (b) Rangitoto Tuhua 74.

11.6 These roads were created for the benefit of Te Rohe Potae Māori. However, the reality was that it was "an exercise in depriving Māori of management control of their own lands, and transferring that control to European judges and Crown officials (who compromise the membership of the District Māori Land Boards)."⁴⁶

⁴¹ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), p 126

⁴² Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), p 126

⁴³ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), p 127

⁴⁴ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), p 150

⁴⁵ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), p 150

⁴⁶ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), p 150

Particulars: Quarry Takings

- 11.7 The Crown acquired land in the following blocks for quarrying purposes without any or adequate consultation with Te Rohe Potae Māori:⁴⁷
- (a) Rangitoto Tuhua 26, for a gravel pit in 1917;
 - (b) Rangitoto Tuhua 26, for a quarry in 1925;
 - (c) Rangitoto Tuhua 36, for a quarry in 1948;
 - (d) Rangitoto Tuhua 55, for a gravel pit in 1921;
 - (e) Rangitoto Tuhua 64O, for quarrying in 1919 (this land had already been taken for scenic purposes in 1912, but was set apart under the Public Works Act for quarry purposes);⁴⁸ and
 - (f) Rangitoto Tuhua 78, for a quarry in 1949 (45 acres);

Particulars: Recreation

- 11.8 The Crown compulsory acquired land from Rangitoto Tuhua 68G2D2 (4 acres, 1 rood and 15 perches) for use as a recreation ground, without any or adequate consultation.⁴⁹

12. SIXTH CAUSE OF ACTION: VESTED LANDS

- 12.1 The Claimants adopt the generic pleadings on Vested Lands and say further:

Particulars:

- 12.2 In 1904, 25,607 acres of the Rangitoto Tuhua Block in the south-east of the Inquiry District was transferred to the Maniapoto-Tuwharetoa Council Land Board.⁵⁰ The following blocks were "transferred" to the Land Board in 1904:⁵¹

⁴⁷ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), p 150

⁴⁸ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), p 168

⁴⁹ Alexander, *Public Works and other takings in Te Rohe Potae District* (Wai 898, #A63), pp 251, 254

⁵⁰ Dr Helen Robinson and Dr Paul Christoffel, *Aspects of Rohe Potae Political Engagement, 1886 to 1913*, August 2011, (Wai 898, #A71), p 144

⁵¹ T. J. Hearn, *Māori, land, and the Crown in Te Rohe Potae c1900 to c1935*, June 2011, (Wai 898, #A73), p 80

Blocks	Acres transferred	Total owners	Total shares	Shares represented by signatures
Rangitoto Tuhua 71	1513	36	109	63
Rangitoto Tuhua 57A	6772	134	251	137.5
Rangitoto Tuhua 72 Pt	15874	44	61	34
Rangitoto Tuhua	1448	28	29	17

12.3 By 1910, the Waikato-Maniapoto Māori Land Board made recommendations for vested land based on the number of owners.⁵² The following blocks were included:⁵³

- (a) Rangitoto Tuhua 35B2 – two owners
- (b) Rangitoto Tuhua 74B3 – three to five owners
- (c) Rangitoto Tuhua 74B4 – three to five owners
- (d) Rangitoto Tuhua 7 – five to ten owners
- (e) Rangitoto Tuhua 64O – five to ten owners

13. SEVENTH CAUSE OF ACTION: MĀORI LAND ADMINISTRATION AND DEVELOPMENT

13.1 The Claimants adopt the generic pleadings on Māori Land Administration and Development.

⁵² Hearn, *Māori, land, and the Crown in Te Rohe Potae*, (Wai 898, #A73), p 239

⁵³ Hearn, *Māori, land, and the Crown in Te Rohe Potae*, (Wai 898, #A73), pp 239 - 240

14. EIGHTH CAUSE OF ACTION: LOCAL GOVERNMENT AND RATING

14.1 The Claimants adopt the generic pleadings on Local Government and Rating and say further:

Particulars:

14.2 In 1933, the Taumarunui County Council recommended that Te Rohe Potae land be exempted from rating in accordance with section 104 of the Rating Act 1925. However, in 1939, over 142,000 acres were affected including 41 Rangitoto Tuhua Blocks.⁵⁴

14.3 In 1955, the local council resumed rating on the blocks without consent and consultation with the owners.⁵⁵

15. NINTH CAUSE OF ACTION: ECONOMIC DEVELOPMENT

15.1 The Claimants adopt the generic pleadings on Economic Development and say further:

Particulars: Forestry

15.2 By 1907, Ellis and Burnand was the principal sawmilling company operating in the Rohe Potae Inquiry District.⁵⁶

15.3 Te Rohe Potae Māori were involved in the sawmilling industry as owners of forest land. By 1907, most of the timber milled was from Māori land.⁵⁷

15.4 In 1907, the Stout Ngata Commission's Report recorded that the leases covered an area of 55,113 acres. 51, 338 acres were located within the subdivisions of the Rangitoto Tuhua block.⁵⁸ The following table illustrates the timber leases noted in the Stout Ngata Report:⁵⁹

⁵⁴ Jane Luiten, *Local Government in Te Rohe Potae*, A report Commissioned by the Waitangi Tribunal for the Te Rohe Potae Casebook Research Program, January 2011, (Wai 898, #A24) p 190

⁵⁵ Luiten, *Local Government in Te Rohe Potae*, (Wai 898, #A24) p 190

⁵⁶ Philip Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries of the Rohe Potae Inquiry District, 1880 – 2000*, February 2011, (Wai 898, #A25), p 48

⁵⁷ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 48

⁵⁸ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 44

⁵⁹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 44

Block	Area (acres)
Rangitoto Tuhua 1	937
Rangitoto Tuhua 2	2,764
Rangitoto Tuhua 52	9,031
Rangitoto Tuhua 61c	4,791
Rangitoto Tuhua 66	10,312.5
Rangitoto Tuhua 76	8,758
Rangitoto Tuhua 79	7,000
Rangitoto Tuhua 80	7,744.5
Total	51,338

15.5 The report did not include details of the timber lease between J. W. Ellis and the owners of Rangitoto Tuhua 36, known as Te Tiroa block.⁶⁰ In 1898, Ellis secured timber rights over the entire block, an area of 30,316 acres.⁶¹ All 100 owners of the Rangitoto Tuhua 36 block signed the timber agreement.⁶²

- (a) This agreement secured access for expanding Ellis and Burnand's company.⁶³
- (b) In 1901, the company had a portable mill working at Tiroa, with timber used for building a larger mill at Mangapehi.⁶⁴
- (c) More mills were opened by Ellis and Burnand in 1906 at Manunui and in 1913 at Ongarue.⁶⁵

15.6 From 1900 to 1910, a number of leases provided for timber cutting in Te Rohe Potae Inquiry District.⁶⁶ The following is a table of the lease agreements relevant to the Claimants from 1901 to 1908:⁶⁷

⁶⁰ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), pp 44, 50

⁶¹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 44

⁶² Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 50

⁶³ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 44

⁶⁴ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 44

⁶⁵ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 44

⁶⁶ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 56

⁶⁷ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 57

Date	Block	Details
3/5/1904	Rangitoto Tuhua 8 (300 a 0r 00p)	Lease to Thomas Price to enable cutting of totara and all other timber. Total rental of £5000 over ten years. No provision for royalties.
7/9/1907	Rangitoto Tuhua 68G	Lease application. Proposal to waive timber royalties in return for an increase in annual rental.
10/7/1908	Rangitoto Tuhua 68P (516a 1r 16p)	Lease application. Annual rental, with royalties to be paid for any timber cut and sold.

- (a) The leases specified that timber could be cut and an annual rental was to be paid to the owners. In some lease agreements, "royalty payments for the timber were charged in addition to the annual rental, in other cases the value of the timber was included in the annual rental."⁶⁸
- (i) For example, a timber lease considered by the Maniapoto-Tuwharetoa District Maori Land Board in 1906 for Rangitoto Tuhua 3G, stated that no millable timber was to be felled.⁶⁹
- (ii) Similarly, in 1908 the Land Board considered the lease over Rangitoto 68P, which stated that "the lessee could cut the small amount of timber on the block upon the condition that specified royalties were to be paid to the owners for any timber cut."⁷⁰
- (b) The Land Council / Land Board was only willing to consider the alienation of timber through leasing agreements.

⁶⁸ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 57

⁶⁹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 58

⁷⁰ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 58

- (c) In 1904, the Land Council refused to consider timber agreements reached between sawmiller Charles McDonnell and the owners of the Rangitoto Tuhua 21, 66 and 76 blocks. The Council advised the applicant that the agreements had to be brought before it in the form of leases.⁷¹

15.7 Under section 26 of the Māori Land Claims Adjustment and Laws Amendment Act 1907, parties with existing agreements for timber had to apply to the local Māori Land Board to have the agreements approved.⁷² The following applications were received by the Maniapoto-Tuwharetoa and Waikato District Māori Land Boards in Te Rohe Potae:⁷³

Block	Area	Applicant	Details
Rangitoto Tuhua 36	30,163 acres	Earl and Kent (for Ellis and Burnand)	Application for right to buy timber for royalty for 1s 6d per hundred superficial feet for totara and 10d for other timber. Enquiry held on 7 December 1907. An order in Council issued on 7 August 1911 authorised the Board to approve the alienation of timber.
Rangitoto Tuhua 66	10,382 acres	Travers, Russell, and Campbell (for J. McGarth)	Application relating to an agreement made in 1904. Enquiry held on 29 September 1908. The agreement was confirmed and the cutting rights were secured by Ellis and Burnand.
Rangitoto Tuhua 67A	5,063 acres	Travers, Russell, and Campbell (for R.H. Stewart)	Enquiry held on 10 July 1908. Outcome of inquiry not established.

⁷¹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 57

⁷² Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 59

⁷³ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 61

Rangitoto Tuhua 68	10,169 acres	Earl and Kent (for A.H. Hyde, M.J. Graham, and C. Harrison)	Application to cut timber "with usual rights to pay royalties and to erect sawmills within six months." Enquiry held 28 February 1908. Outcome of inquiry not established. One owner, Te Whiwhi, stated that: "I do not approve of this agreement. I have not signed any agreement for the sale of the timber."
Rangitoto Tuhua 76		Travers, Russell, and Campbell (for J. McGarth)	Application related to about half the block, which had a total area of 8,757 acres. Enquiry held on 29 September 1908. Out come of enquiry not established.
Rangitoto Tuhua 79	8,750 acres	Earl and Kent (for H.Hyde, M.J. Graham, and C. Harrison)	Application for right to cut timber. Struck out 4 March 1910.

- (a) Two agreements were confirmed during this period, namely, Rangitoto Tuhua 36 and Rangitoto Tuhua 66, which consisted of 40,545 acres.⁷⁴

15.8 By 1910, the Crown had purchased half of the land in Te Rohe Potae, including forest lands. These purchases failed to recognise the value of timber in the purchase price.⁷⁵ As a result, Māori lost control of significant areas of commercially valuable forest.⁷⁶

⁷⁴ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), pp 62, 65

⁷⁵ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 71

⁷⁶ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 71

- (a) For example, the accuracy of the government valuation for Rangitoto Tuhua 9 was questionable.⁷⁷ The Crown acquired interests in Rangitoto Tuhua 9 between 1915 and 1918, an area consisting of about 12,137 acres.⁷⁸

15.9 Under Part XIV of the Native Land Act 1909, Te Rohe Potae Māori lost control of forest lands through the vesting of such lands in the Waikato-Maniapoto District Māori Land Board.⁷⁹

- (a) Rangitoto Tuhua 9 (12,340 acres) was vested in the Waikato-Maniapoto Board in 1909.⁸⁰
- (b) By 1918, the Crown had acquired interests in Rangitoto Tuhua 9A (12,137 acres).⁸¹ The Crown permitted Ellis and Burnand's company long-term cutting rights over the Rangitoto Tuhua 9 block until about 1955.⁸²

Particulars:

15.10 The Native Land Act 1909 and the Forests Act 1921-22 permitted the alienation of timber for cutting rights.⁸³ Between 1910 and 1921, the Waikato-Maniapoto District Māori Land Board provided for the alienation of timber cutting rights.⁸⁴

15.11 The timber alienations concerned the following blocks:⁸⁵

- (a) Rangitoto A48B2C;
- (b) Rangitoto Tuhua 25 Section 5B;
- (c) Rangitoto Tuhua 2B;
- (d) Rangitoto Tuhua 1; and
- (e) Rangitoto Tuhua 60A3B5A (324a Or 17p.)⁸⁶

⁷⁷ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 71

⁷⁸ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 70

⁷⁹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 86

⁸⁰ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 86

⁸¹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 87

⁸² Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 87

⁸³ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 91

⁸⁴ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 91

⁸⁵ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 88

15.12 The land partitions contributed to the number of timber alienations, which divided the blocks into smaller holdings.⁸⁷

15.13 Timber sold between 1910 and 1921 was paid either by a fixed sum in instalments or royalties based on the volume of timber cut.⁸⁸

(a) In 1912, the Waikato-Maniapoto District Māori Land Board "confirmed a resolution passed by a meeting of the owners of Rangitoto Tuhua 1 to sell the timber cutting rights over the 937 acre block for £2108 5s, the Government Valuation."⁸⁹

15.14 Between 1922 and 1938, the following alienations took place:⁹⁰

- (a) Rangitoto Tuhua 68C (1817 acres);
- (b) Rangitoto Tuhua 36;
- (c) Rangitoto Tuhua 74B6E1B (262 acres, containing 50 acres of bush);
- (d) Rangitoto Tuhua 74B6E1A;
- (e) Rangitoto Tuhua 68G2D2 (636a 1r 00p, containing 250a of bush);
- (f) Rangitoto Tuhua 73B1A;
- (g) Rangitoto Tuhua 73B1B;
- (h) Rangitoto Tuhua 37B1 (159a 0r 33p, all bush);
- (i) Rangitoto Tuhua 54A2 (914a 0r 00p, all bush);
- (j) Rangitoto Tuhua 54B, 54D1, 54D2, and 54D3 (560a 2r 00p, all bush);
- (k) Rangitoto Tuhua 36A1B2A (926a 0r 11p);
- (l) Rangitoto Tuhua 57B2B and 57B2C;

⁸⁸ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 90

⁸⁷ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 91

⁸⁶ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 92

⁸⁹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 92

⁹⁰ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), pp 103-104

- (m) Rangitoto Tuhua 54B (531a 3r 00p, containing 300 acres of bush);
- (n) Rangitoto Tuhua 73B1A and 73B1B; and
- (o) Rangitoto Tuhua 36A1B2B1.

15.15 Between 1922 and 1938, illegal logging operations were taking place on Te Rohe Potae Māori land without the consent of owners.⁹¹

- (a) A million superficial feet of timber was removed from Rangitoto Tuhua 66A3B was taken without the consent of owners or the Waikato-Maniapoto District Land Board. The royalties from the timber were paid to an individual who had no Court-recognised interest in the land.⁹²

15.16 Between 1939 and 1980, there were at least 70 timber alienations in Te Rohe Potae.⁹³ This involved the following blocks.⁹⁴

- (a) Rangitoto Tuhua 37B2;
- (b) Rangitoto Tuhua A67B2A;
- (c) Rangitoto Tuhua 3511B2B;
- (d) Rangitoto Tuhua 36A1A1A1;
- (e) Rangitoto Tuhua 36A1A1A2;
- (f) Rangitoto Tuhua 21B2A2A2;
- (g) Rangitoto Tuhua 35H2A and 35H2B;
- (h) Rangitoto Tuhua 3512C (parts, 90 acres);
- (i) Rangitoto Tuhua 36A2C5 (571a 3r 15p);
- (j) Rangitoto Tuhua 36B3C2 (597a 3r 15p);

⁹¹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 112

⁹² Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 112

⁹³ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 162

⁹⁴ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), pp 145-148

- (k) Rangitoto Tuhua 36B3D1 and 36B3D2 (1204a 3r 17p);
- (l) Rangitoto Tuhua 36A1A2 and 36A1B2B2B;
- (m) Rangitoto Tuhua 54B, 54D1, 54D2 and 54D3;
- (n) Rangitoto Tuhua 77B1B2C2B (334a 1r 11p);
- (o) Rangitoto Tuhua 36A1B1 (314 acres);
- (p) Rangitoto Tuhua 54A2 (914 acres);
- (q) Rangitoto Tuhua 25 Sections 2B1 and 2B2 (357 acres and 663 acres);
- (r) Rangitoto Tuhua 25 section 5B2 and Section 5B3;
- (s) Rangitoto Tuhua 36A1B2B2A;
- (t) Rangitoto Tuhua 36B2 and 36B3A;
- (u) Rangitoto Tuhua 76B5;
- (v) Rangitoto Tuhua 6812B6B;
- (w) Rangitoto Tuhua 76B3A (98a 2r 27p);
- (x) Rangitoto Tuhua 37B1, 37B3, 37B4 and 37B5; and
- (y) Rangitoto Tuhua 80B1C1 and 80B1C2.

Particulars: Rangitoto Tuhua Block 36

15.17 Between 1920 and 1950, Ellis and Burnand's cutting licences were extended over Rangitoto Tuhua 36. The original agreement for Rangitoto Tuhua 36 dated from 1898.⁹⁵

15.18 Though the royalty rates for the licences on Rangitoto Tuhua 36 increased, it did not provide provisions for reviewing royalty rates.⁹⁶

⁹⁵ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 137

⁹⁶ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 137

15.19 The process for confirming the agreement concerning Rangitoto Tuhua 36 was inadequate. The Maniapoto-Tuwharetoa District Māori Land Board heard the application in 1907 and failed to:⁹⁷

- (a) Hear evidence from the owners as they were not represented at the hearings;⁹⁸
- (b) Scrutinise the adequacy of the royalty rates – the Board confirmed the 1898 agreement without any requirement for a review of rents or a limitation of the term of the agreement;⁹⁹ and
- (c) Revise the royalty rates until 1925, following protests by Te Rohe Potae Māori.¹⁰⁰

15.20 From 1939, significant sums of money were paid by the Crown for timber. However, given the nature of Māori land titles, they were often distributed to large numbers of owners meaning that individuals received modest sums.¹⁰¹ As a result, "potential for revenue from timber to be reinvested for long-term economic and social development purposes" was limited.¹⁰²

- (a) An example of this is Rangitoto Tuhua 54A2 (914 acres), which was alienated in 1956 for about £11,350. It is estimated that at the time the timber was sold there were as many as 200 owners.¹⁰³

Particulars: Coal mining

15.21 Te Rohe Potae Māori involvement in the coal mining industry was based on receiving payments for coal mining undertaken on land that was in their ownership and to being employed as coalminers.¹⁰⁴

15.22 The Rangitoto Coal Mine, located on Rangitoto Tuhua 35C, was incorporated in August 1919.¹⁰⁵

⁹⁷ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 189

⁹⁸ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 189

⁹⁹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 189

¹⁰⁰ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 303

¹⁰¹ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 153

¹⁰² Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 154

¹⁰³ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 153

¹⁰⁴ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 202

15.23 In 1921, the Waikato-Mainapoto District Māori Land Board granted an application for mining rights over Rangitoto Tuhua 35C in favour of the Rangitoto Coal Company.¹⁰⁶

(a) The mining operation folded in 1923.¹⁰⁷

15.24 In 1950, the Rangitoto Opencast Mine began working in the Tahala-Rangitoto area, which secured a lease over Rangitoto Tuhua 35C2B1 (386 acres). The company was owned by Māori, however poor access to the mine limited demand for the coal.¹⁰⁸

16. TENTH CAUSE OF ACTION: HEALTH AND EDUCATION

16.1 The Claimants adopt the generic pleadings on Health and Education and say further:

Particulars: Education

16.2 After 1900, Crown policy focused on practical rather than academic skills. As a result Te Rohe Potae Māori were employed in lesser-skilled occupations, leaving the more prestigious qualifications open to Pakeha.¹⁰⁹

16.3 In particular, "native schools maintained an emphasis on vocational training – agriculture and woodwork for boys, and cooking, needlework, and home crafts for girls."¹¹⁰ In 1912, the Chief Inspector of Native Schools reported that handiwork was generally being used to occupy pupils while others were being taught other subjects.¹¹¹

16.4 Other factors inhibiting the Claimants' education included:

(a) The views of education officials on the late age at which Māori on average began their education;¹¹²

(b) Inaccessibility of education (late introduction of schools in Te Rohe Potae);¹¹³

¹⁰⁵ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 217

¹⁰⁶ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 217

¹⁰⁷ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 217

¹⁰⁸ Cleaver, *Māori and the Forestry, Mining, Fishing and Tourism Industries*, (Wai 898, #A25), p 220

¹⁰⁹ Dr Paul Christoffel, *The Provision of Education Services to Māori in Te Rohe Potae, 1840-2010*, Waitangi Tribunal, February 2011, (Wai 898, #A27), p 173

¹¹⁰ Christoffel, *The Provision of Education Services*, (Wai 898, #A27), p 173

¹¹¹ Christoffel, *The Provision of Education Services*, (Wai 898, #A27), p 176

¹¹² Christoffel, *The Provision of Education Services*, (Wai 898, #A27), p 198

¹¹³ Christoffel, *The Provision of Education Services*, (Wai 898, #A27), p 199

- (c) High teacher turnover (isolated locations had trouble attracting teachers and their small size limited the teachers pay);¹¹⁴
- (d) Quality of the teachers and the facilities;¹¹⁵
- (e) Poverty (light clothing, no food, poor health);¹¹⁶ and
- (f) Disrupted schooling (absence due to illness or school closures).¹¹⁷

17. ELEVENTH CAUSE OF ACTION: ENVIRONMENTAL ISSUES

17.1 The Claimants adopt the generic pleadings on Environmental Issues and say further:

Particulars: Taringamotu River

17.2 In recent years, the Taringamotu River and land adjacent has been eroded from continual extraction of gravel for roading. If this erosion continues, the land alongside the river will be undermined.¹¹⁸

17.3 Resources and kai in the rivers, on the land and in the bush within Rangitoto Tuhua have become depleted through ongoing damage to the environment, including deforestation, overfishing and pollution. For example, the tuna population in the Waimiha area has declined over the last century.¹¹⁹

17.4 The Crown allowed power pylons and lines to be erected without consultation resulting in an obstruction in the flow of wairua.¹²⁰

¹¹⁴ Christoffel, *The Provision of Education Services*, (Wai 898, #A27), p 199

¹¹⁵ Christoffel, *The Provision of Education Services*, (Wai 898, #A27), pp 201-202

¹¹⁶ Christoffel, *The Provision of Education Services*, (Wai 898, #A27), p 203

¹¹⁷ Christoffel, *The Provision of Education Services*, (Wai 898, #A27), p 204

¹¹⁸ Professor Michael Belgrave et al, *Te Rohe Potae Environmental and Waahi Tapu Report*, A Report Commissioned by the Crown Forestry Rental Trust for the Waitangi Tribunal's Te Rohe Potae District Inquiry, August 2011, (Wai 898, #A76), pp 304, 317

¹¹⁹ Belgrave et al, *Te Rohe Potae Environmental and Waahi Tapu*, (Wai 898, #A76), p 386

¹²⁰ Claimant evidence

18. TWELFTH CAUSE OF ACTION: CULTURAL (TAONGA AND WAHI TAPU)

18.1 The Claimants adopt the generic pleadings concerning Assaults on Tikanga.

Particulars:

18.2 The Crown introduced the Tohunga Suppression Act 1907, amended by the Tohunga Suppression Act 1908, which made it illegal for tohunga to practice and provide treatment for disease and / or profess supernatural powers.¹²¹

18.3 The enactment of the Tohunga Suppression Act 1908 undermined matauranga and made illegal the practice of an integral part of the Claimants' tupunas' way of life.

18.4 The Crown has failed to actively protect the Claimants' wahi tapu and taonga, namely urupa and archeological sites of spiritual significance.¹²²

18.5 The Crown has failed to adequately actively protect the Claimants' rights to practice their tikanga according to their customs and rites. The erosion of tikanga through Crown Acts and practices has been responsible for the historical and contemporary severing of relationships within the Te Rohe Potae whanau, hapu and iwi.¹²³

19. PREJUDICE

19.1 As a result of the Crown's acts and omissions, the Claimants have been and continue to be prejudicially affected in that:

- (a) The Claimants are now without significant lands and resources to be held in accordance with their lore and customs;
- (b) The Claimants' rangatiratanga, lore and customs, have been undermined;
- (c) The Claimants have been left with insufficient lands and resources upon which to build a future;
- (d) The Claimants' ability to exercise tino rangatiratanga, including the right to possess, manage and control all their property, resources and social

¹²¹ Tohunga Suppression Act 2008 Section 2(1)

¹²² Belgrave et al, *Te Rohe Potae Environmental and Waahi Tapu*, (Wai 898, #A76), pp 19-21

¹²³ Claimant evidence

structures in accordance with the Claimants' lore, cultural preferences and customs has been severely diminished, and

- (e) The Claimants have been prevented from developing, exploiting and managing their resources in a manner consistent with their cultural preferences.

20. REDRESS

20.1 The Claimants seek the following redress:

- (a) That the Tribunal inquire into the prejudice suffered by the Claimants arising from breaches of the Treaty by the Crown, including those alleged in this Statement of Claim;
- (b) That the Tribunal make findings as to breach and prejudice, on the terms alleged and generally, and as the Tribunal further determines;
- (c) That the Tribunal make recommendations for recognition by the Crown of the Claimants' tino rangatiratanga consistent with the Treaty including:
 - (i) The restoration to the Claimants of their tino rangatiratanga and full customary entitlement to the Claimants' traditional rohe;
 - (ii) The full and meaningful recognition of the Claimants' tino rangatiratanga, in accordance with their lore and customs, over their lands, estates, forests, fisheries, other properties, lakes, rivers, waterways, other resources and taonga including whether or not such taonga are perceived now as being in their ownership or possession;
 - (iii) The means by which such recognition must be effected to accord with te Tiriti guarantee of the tino rangatiratanga of the Claimants;
 - (iv) The return to the Claimants of all ancestral lands, estates, forests, fisheries, other properties, lakes, rivers, waterways and other resources and taonga wrongfully acquired by the Crown;

- (v) Pursuant to Sections 8A-8H(j) of the Treaty of Waitangi Act 1975, the return to the Claimants of all relevant Crown land including:
 - (A) Land held by any state-owned enterprise; and
 - (B) Land held by any institution under the Education Act 1989;
- (vi) The return to the Claimants of all land owned by the Crown within the claim area and any improvements thereon;
- (vii) The establishment of a fair process which will enable the Claimants and the Crown to resolve issues between them;
- (viii) That the Crown deal directly with the Claimants in negotiating the settlement of their Waitangi Tribunal claims;
- (ix) The restoration of the social, cultural, resource and economic base of the Claimants in a full and substantial manner;
- (x) An appropriate apology;
- (xi) Compensation for inter alia the loss of customary use, occupation and enjoyment of lands, estates, forests, fisheries, other properties, lakes, rivers, waterways and other resources and taonga as a result of breaches of the Treaty since its execution down to the present;
- (xii) The recognition of the Claimants' kaitiakitanga and rangatiratanga in relation to their taonga;
- (xiii) The payment of the full costs of the Claimants for the presentation of this claim and the costs of recovering any land recommended to be returned or other costs incurred in securing the implementation of these recommendations, and,
- (xiv) The grant of such other relief as the Tribunal sees fit.

21. LEAVE TO AMEND STATEMENT OF CLAIM

- 21.1 This Amended Statement of Claim is as fully particularised as is possible given the time constraints, information and research available to the Claimants at the time of filing this Consolidated Statement of Claim.
- 21.2 The Claimants, therefore, reserve the right to file further specific allegations and particulars and/or other causes of action that are not included in this Consolidated Statement of Claim when further information and research becomes available.

THIS STATEMENT OF CLAIM is filed by **Peter Johnston** and **Hai-Yuean Tualima** of Rainey Collins Lawyers, Counsel for the Claimants. The address for service for the Claimants is Level 16, 163 Featherston Street, Wellington.

Documents of service on the Claimants may be left at that address or may be:

- a. Posted to the solicitor at PO Box 689; or
- b. Left for the solicitor at document exchange for direction to DX SP20010, Wellington;
- c. Transmitted to the solicitor by facsimile (04) 473 9304; or
- d. Transmitted to the solicitor by email to pjohnston@raineycollins.co.nz / htualima@raineycollins.co.nz

Documents served on the Claimants should be marked for the attention of Peter Johnston and Hai-Yuean Tualima

Signed: _____

Counsel for the Claimant

