IN THE WAITANGI TRIBUNAL

WAI 987

IN THE MATTER of The Treaty of Waitangi Act 1975

AND Claims in Te Rohe Pōtae Inquiry and consolidated under claim Wai 898

AND the Wai 987 claim by Tame Te Nuinga Tuwhangai and Pauline Stafford on behalf of themselves and the hapū of Ngāti Hari/Ngāti Urunumia

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AMENDED STATEMENT OF CLAIM FOR NGĀTI HARI/NGĀTI URUNUMIA

DATED THE 9th DAY OF DECEMBER 2011

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WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

PART A - INTRODUCTION

Te Kereme

1. The Wai 987 claim is made for and on behalf of Ngāti Hari/Ngāti Urunumia by Tame Te Nuinga Tuwhangai and Pauline Stafford ("the Claimants").

2. Ngāti Hari/Ngāti Urunumia is a hapū of the Ngāti Maniapoto confederation of hapū.

3. This Amended Statement of Claim in Te Rohe Potae Inquiry (Wai 898) identifies in terms of Sections 6(1)(a) through to 6(1)(d) of the Treaty of Waitangi Act 1975 ("the Act"), various breaches by the Crown of the principles of the Treaty of Waitangi especially concerning Rangitoto Tuhua 52 A1 and other grievances that have caused, continue to cause, or will cause prejudice to Ngāti Hari/Ngāti Urunumia.

4. The Waitangi Tribunal is therefore requested pursuant to the provisions of the Act to inquire into this claim and to report on the causes of action and recommendations sought.

Background

5. The original Statement of Claim for Wai 987 was filed on 19 October 2004 was brought by Tame Te Nuinga Tuwhangai on behalf of Ngāti Hari/Ngāti Urunumia.

6. This Amended Statement of Claim further amends and particularises the Wai 987 claim. Further, Pauline Stafford no longer wishes to be a named claimant and accordingly the claimants seek to add Wayne Houpapa as a new named claimant for Wai 987.

7. The Claimants previously, along with John Wi for the Wai 1255 claim, filed a Third Amended Consolidated Statement of Claim within the Whanganui Inquiry District. The Claimants anticipate that that Claim

will remain as drafted for inquiry by the panel constituted for the Whanganui Inquiry. This is because the Claimants have customary interests which cross the Waitangi Tribunal's various district inquiry boundaries. This Amended Statement of Claim only relates to the Wai 987 Ngati Hari/Ngati Urunumia claim within Te Rohe Pōtae Inquiry District.

8. The Claimants' interests include the southern and eastern limits of various, Rangitoto-Tuhua Blocks within Te Rohe Pōtae Inquiry District and part of the Ohura South Blocks in the Whanganui Inquiry District.

9. However, the customary interests outlined in this Statement of Claim do not exhaustively capture the entirety of the Claimants' tino rangātiratanga.

10. The Claimants are aware that other hapū hold, or assert, customary interests in the lands that are the subject of this claim. The Claimants do not seek to deny any such interests of other groupings in the lands that are the subject of this Amended Statement of Claim.

Jurisdiction

11. The Ngāti Hari/Ngāti Urunumia hapū allege that the Wai 987 Claimants are Māori who are representative of whānau and the hapū of Ngāti Hari/Ngāti Urunumia within the iwi of Ngāti Maniapoto.

12. The claimants Tame Te Nuinga Tuwhangai and Pauline Stafford, and the hapū, whānau and individuals of Ngāti Hari/Ngāti Urunumia are Māori and have been and remain prejudicially affected by the Ordinances, Acts, Regulations, policies, practices, acts and omissions of the Crown set out herein, which were enacted, promulgated, formulated, undertaken, done or omitted to be done by the Crown in breach of the principles of the Treaty of Waitangi.

Ngāti Hari/Ngāti Urunumia

Ko Hikurangi te Maunga
Ko Taringamotu te Awa
Ko Maniapoto te Iwi
Ko Ngāti Hari, Ko Ngāti Urunumia nga hapu
Ko Hia Kaitupeka te Marae
Ko Hari te Whare Tupuna

13. As indicated above, this claim is brought for the benefit of Ngāti Hari/Ngāti Urunumia hapu. The pepeha above set out significant geographical locations and markers Ngāti Hari/Ngāti Urunumia. The following sets out a broad description of Ngāti Hari/Ngāti Urunumia and its traditions and history.

14. The Claimants and the hapū of Ngāti Hari/Ngāti Urunumia are descended from Urunumia, the daughter of Rangatahi and the great-granddaughter of Maniapoto.

15. The following whakapapa linking the tupuna Hari and Urunumia to Maniapoto is provided:

Hoturoa
|
Hotuope
|
Hotumatapu
|
Hotuawhio
|
Motai
|
Ue
|
Rakamaomao
|
Kakati
|
Tawhao
|
Turongo
|
Raukawa
|
Rereahu
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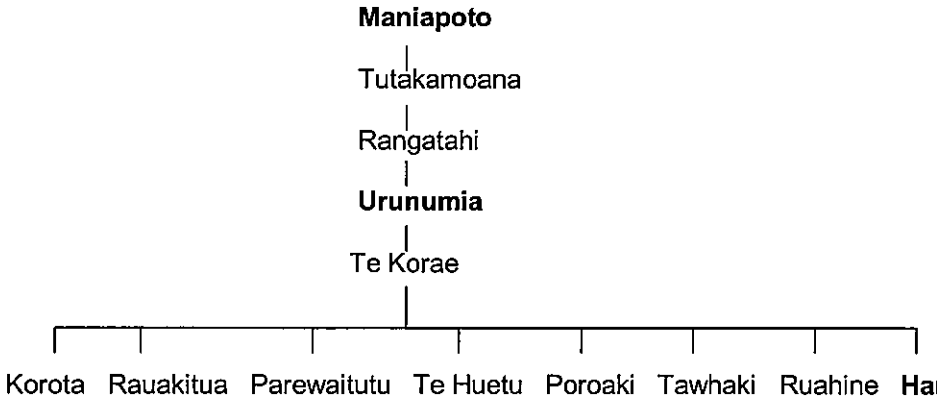

16. According to Ngāti Hari/Ngāti Urunumia traditions, the chieftainess Urunumia had a number of children. Her descendants eventually became an important hapū sections within Ngāti Maniapoto. Ngāti Hari/Ngāti Urunumia was tasked with patrolling and maintaining Maniapoto's borders.

17. Significant tupuna of Ngati Hari/Ngati Urunumia included: Hari I and his three senior brothers Korota, Te Huetu and Tawhaki; Toa-rangatira Korota and Maniauruahu Te Huetu; Ngarue; Haupokia Te Pakaru and his brother Hari Maruru and his son Paraone Tongapurutu; Wahanui Te Huatare; Rangawhenua Tawhaki and his son Te Hihi; Te Huia Kingi; Kuia Makehu; Rangiterewai Haupokia; Ngahinu Hariata; Te Haa Te Naku and his sons Peita Kotuku and his younger brother Te Manu Tupukaheke.

18. Ngāti Hari/Ngāti Urunumia maintained a network of pa and kainga in Te Rohe Potae stretching from the Taringamotu River back up into the Pureora State Forest and over to the Upper Mokau River. Included here are some of the names and locations:

    (a) Hia Kaitupeka; Kainga – Taringamotu;

    (b) Papawaka; Pa Tangata – Taringamotu;

    (c) Otamakahi; Kainga - Taringamotu Mangakahu Valley Rd;

    (d) Te Uranga; Kainga - Taringamotu Mangakahu Valley Rd;

    (e) Otutewehi; Pa Tangata - in the Mangakahu Valley;

    (f) Puketui; Pa Tangata - in the Mangakahu Valley;

(g) Hawaiki; Kainga on the Taringamotu Rd;

(h) Whakatimutimu; Pa Tangata - Upper Mokau region.

19. Ngāti Hari/Ngāti Urunumia drew sustenance from their awa such as Taringamotu and the bounty of abundant bird life and native species of the surrounding bush.

20. Urunumia and Hari's descendants, Ngāti Hari/Ngāti Urunumia have lived and maintained their ahi kaa status in and around Hikurangi and Tuhua Maunga from before the time of European arrival and resettlement of Aotearoa, to the time of the signing of the Treaty of Waitangi and during the forming and establishment of the self governing autonomous state "Te Rohe Potae" until the present time.

21. As at 1840 therefore, Ngāti Hari/Ngāti Urunumia were a hapū grouping (along with others of the Ngāti Maniapoto confederation including Ngāti Raerae and Ngāti Hari/Ngāti Urunumia) in the southern and eastern reaches of the Rangitoto-Tuhua blocks.

22. The Ngāti Hari/Ngāti Urunumia claimants assert that they hold customary interests in the following land blocks:

(a) Rangitoto-Tuhua No. 1; ("Orangiteihi Block")
(b) Rangitoto-Tuhua No. 2; ("Pukuweka Block")
(c) Rangitoto-Tuhua No. 7; ("Ngakonui Block")
(d) Rangitoto-Tuhua No. 8 ("Papawaka Block")
(e) Rangitoto-Tuhua No. 9; ("Potakataka Block")
(f) Rangitoto-Tuhua No. 21; ("Ngairo Block")
(g) Rangitoto-Tuhua No. 52; ("Hikurangi South Block")
(h) Rangitoto-Tuhua No. 56; ("Crown Block")
(i) Rangitoto-Tuhua No. 66; ("Puketurua Block")
(j) Rangitoto-Tuhua No. 67; ("Huhutirau Block")
(k) Rangitoto Tuhua No. 73 ("Otamakahi Block");
(l) Rangitoto-Tuhua No. 74 ("Te Uranga Block")
(m) Maraetaua Land Block
(n) And Ohura South A block in the Whanganui Inquiry District.

PART B - THE CROWN'S TREATY BREACHES

23. The Claimants allege the following breaches of the Treaty of Waitangi, and its principles, and also of Te Rohe Pōtae Sacred Compact.

Te Rohe Pōtae Sacred Compact

24. The claimants repeat, affirm and adopt the generic pleadings on Te Rohe Pōtae compact and the breaches set out therein.

25. During 1882 and 1883 (and through to 1885) certain chiefs of Te Rohe Potae region and the Crown engaged in negotiations and meetings and made a series of agreements and understandings which have been described collectively as the King Country or Rohe Pōtae "Sacred Compact" or "Aotea Compact".

26. On 26 June 1883 chiefs on behalf of the Maniapoto, Raukawa, Tuwharetoa, Hikairo, and Whanganui tribes presented a petition outlining the terms of the Sacred Compact.

27. The Crown breached the terms and spirit of the Sacred Compact and failed to adequately remedy such breaches as set out in this Statement of Claim.

28. The Crown, having entered into various agreements and understandings through the Sacred Compact regarding the surveys for the main trunk railway line, then acted in contravention of that Sacred Compact by enacting legislation that expedited the alienation of the lands of Ngāti Hari/Ngāti Urunumia through the Native Land Court, namely the Native Land Alienation Restriction Act 1884 and the Railways Authorisation Act 1884.

29. Following the passing of various acts, in 1889, in further contravention of the Sacred Compact, the Crown then embarked upon a land purchase programme which led to further alienations of lands of Ngāti Hari/Ngāti Urunumia.

30. The Crown failed to properly consult with Ngāti Hari/Ngāti Urunumia

as to the processes of enacting the Native Land Alienation Restriction Act 1884 and the Railways Authorisation Act 1884 and advise Ngāti Hari/Ngāti Urunumia of the implications of these Acts and related legislation.

31. The Crown, having agreed pursuant to the Sacred Compact to prohibit the introduction of alcohol in Te Rohe Pōtae, manifest by a series of Proclamations issued in 1884 - 1894, then acted in breach of the Sacred Compact by granting licences to permit the introduction, sale and consumption of alcohol following a dubious process of referendum.

Ngāti Hari/Ngāti Urunumia Hapū Landlessness

32. The claimants repeat, affirm and adopt the generic pleadings on Protection of Landbase and the breaches set out therein.

33. The Crown failed to prevent, rectify, or remedy the rapid alienation of Ngāti Hari/Ngāti Urunumia lands so that the remaining land in hapū ownership is insufficient for the present and future needs of Ngāti Hari/Ngāti Urunumia.

Particulars

(a) At 1840 Ngāti Hari/Ngāti Urunumia held customary interests within its rohe in the south-eastern Te Rohe Pōtae Inquiry District and Central North Island Inquiry District.

(b) The Crown, through the Native Land Court, failed to recognise or properly recognise and provide for all Ngāti Hari/Ngāti Urunumia customary land interests so that the bulk of their customary lands were granted as absolute interests to other hapū and hapū individuals.

(c) The Crown's policy was to individualise the tribal title to all lands within the districts now part of Te Rohe Potae Inquiry District.

(d) All of the titles awarded to Ngāti Hari/Ngāti Urunumia within the districts now part of Te Rohe Potae Inquiry were awarded to individuals of the hapu rather than to the hapu itself.

(e) The Crown undertook a determined and comprehensive purchase programme designed to obtain for the Crown as much Māori land as possible from within the districts now part of Te Rohe Potae Inquiry District.

(f) This programme was carried out in order to acquire Māori land for European settlement and prosperity and with little or no regard to the rights of Ngāti Hari/Ngāti Urunumia over their lands.

(g) As at 2011, there are no lands within Te Rohe Pōtae Inquiry

District, Central North Island Inquiry District, nor throughout the country, under the legal ownership, control or guardianship of Ngāti Hari/Ngāti Urunumia as a hapū.[1]

34. The Crown failed to ensure that sufficient Ngāti Hari/Ngāti Urunumia lands and resources were set aside as inalienable reserves for the present and future needs of Ngāti Hari/Ngāti Urunumia.

35. The Crown failed to adequately remedy the state of landlessness of Ngāti Hari/Ngāti Urunumia and failed to compensate for the Crown's failure to ensure sufficient land was retained in tribal ownership for the present and future needs of Ngāti Hari/Ngāti Urunumia.

[1] To be supported by tangata whenua evidence

The Alienation of Māori Land and the Native Land Court

36. The claimants repeat, affirm and adopt the generic pleadings on Native Land Court Issues. The claimants also allege the following specific pleadings and particulars:

Introduction of the Native Land Court

37. The Crown, in breach of the Treaty and its principles and contrary to Māori custom and tikanga, and the claimants' tino rangatiratanga, established the Native Land Court with the purpose of:

(a) facilitating the alienation of Māori land for settlement;

(b) commuting Māori customary title and rights into an individualised Pakeha fee simple title;

(c) promoting and facilitating the de-tribalisation of Māori; and

(d) promoting and facilitating the assimilation of Māori into Pakeha customs and practices.[2]

Particulars

(a) Testifying before the Rees-Carroll Commission in 8 May 1891, long serving Under-Secretary of the Native Department T.W. Lewis had argued that the *"whole object"* of the Native Land Court was to *"enable alienation for settlement"*.[3]

(b) *"Unless this object is attained"*, he contended, *"The Court serves no good purpose, and the natives would be better without it"*.[4]

(c) From 1892, the Court in Otorohanga lived up to Lewis's description. Between July and October 1892 the Court defined the shares of individual owners and blocks across Te Rohe Potae providing the essential pre-condition for the wholesale Crown purchase of these interests.[5]

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[2] Williams, D. *Te Kooti Tango Whenua*, 1999, Huia publishers.
[3] Husbands & Mitchell The Native Land Court Land Titles and Crown Land Purchasing in Te Rohe Potae District 1866-1907, September 2011, p.258.
[4] Ibid.
[5] Husbands & Mitchell, p.259.

(d) The definition of individual interest by the Court allowed the Land Purchase Officer to purchase shares with certainty as to the quantity of land he was acquiring with each share.[6]

(e) With such confidence, the Crown Land Purchasing apparatus was able to by-pass local communities altogether concentrating its efforts instead on individual shareholders.[7]

38. The Crown, in breach of the Treaty and its principles, established the Native Land Court without any or any proper consultation with or input from Ngati Hari/Ngāti Urunumia generally.

Particulars

(a) For example, in 1895 the Native Land Court at Otorohanga was the subject of a sustained boycott, as first Ngati Maniapoto and then Ngati Mahuta and Ngati Hikairo withdrew their claims.[8]

(b) The cause of their protest was the Native Land Court Act of the previous year that had extended the Crown's right of pre-emption over Maori owned land to the entire North Island.[9]

(c) The most significant opposition to the Court within Te Rohe Potae appears to have come from supporters of the Kingitanga who are recorded by the Minute Books as refusing to deal with the Court with regard to the Taharoa, Tokanui and Rangitoto-Tuhua Block.[10]

Effect of the Native Land Court upon Ngati Hari/Ngāti Urunumia

39. The Crown, in breach of the Treaty and its principles, through the operation of the Native Land Court destabilised and/or destroyed and failed to protect Ngati Hari/Ngāti Urunumia traditional hapu-based systems of land tenure under tikanga Māori including land rights, use, occupation and control. Title adjudication reduced hapu management over resources into ownership of individual interests, replacing

[6] Ibid.
[7] Ibid.
[8] Husbands & Mitchell, p.273-274.
[9] Husbands & Mitchell, p. 273-274.
[10] Husbands & Mitchell, p.515.

variously layered customary land use rights with fixed boundaries over the land.

Particulars

(a) The individual interests having been defined by the Court, individual owners were free to dispose of the shares as they saw fit with no reference to history or the expressed wishes of the wider community or its acknowledged leaders.[11]

(b) Thus despite the expressed opposition of a communities principal figures to any form or alienation or partition of their ancestral land, and the clear unwillingness of an overwhelming majority of owners to part with their shares, the Government – with the help of the Native Land Court – was nevertheless able to acquire shares in the block and have its interest defined and cut out.[12]

(c) What is clear is that the adversarial nature of the Native Land Court process tended to encourage the construction of geneologies and narratives that emphasised the singularity of a particular groups claim while dismissing or deprecating the stories and ancestries of other, competing groups.[13]

(d) In the process, old wounds and divisions were inevitably opened up and accentuated as contending witnesses and their kaiwhakahaere focused on the things that set competing groups apart, rather than what they may have shared in common or the ways in which their geneologies and stories may have intertwined and overlapped.[14]

(e) The filing of applications from other tribes and from some groups within the Rohe Potae iwi to the Court for investigation of title to lands had begun around the edges of the Rohe Potae District in the year before the 1883 Rohe Potae Block application.

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[11] Husbands & Mitchell, p.260.
[12] Husbands & Mitchell, p.260.
[13] Husbands & Mitchell, p.406.
[14] Ibid.

(f) The smaller applications eventually spread into the core area of what would become the Rohe Potae Block. This growing pressure probably led the Rohe Potae tribal leaders to the conclusion that it would be better to file a large application of which they had ownership than to be cast in the role of respondent and counter-claimant to a burgeoning number of smaller applications.[15]

(g) These applications continued despite the attempts through the application of 1883 to define an area which tribal authority would be maintained. The threat posed by other applications was underlined in the weeks preceding the 1883 application by the apparent loss of Maniapoto and Raukawa tribal title to land in Maraeroa, Hurakia and Pouakani.[16]

(h) Ngati Huru had tipuna who lived on the Hurakia and it was famous for its bird catching grounds and as such contests existed between hapu and iwi over those grounds.[17]

(i) There are also pa sites for Ngati Huru on the Hurakia block.[18]

(j) The risks of non-engagement with the Court had been reinforced by the exclusion of some groups from the title of the Maraeroa, Hurakia and Pouakani blocks at the Courts title investigation hearing of the Tauponuiatia Blocks.[19]

(k) By submitting their land to Court investigation, Maori land owners were promised a title that was clearly defined and recognised by the Government. They were also presented with an asset which unlike customarily owned land, might be legally sold or leased.[20]

(l) Engagement with the Native Land Court, therefore, offered the possibility that Maori too might benefit from developments such as the construction of the North Island main trunk railway and

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[15] Husbands & Mitchell, p. 79.
[16] Ibid.
[17] To be support by tangata whenua evidence.
[18] To be support by tangata whenua evidence.
[19] Husbands & Mitchell, p.93.
[20] Husbands & Mitchell, p.93.

the introduction of European settlement which, as Native Minister Balance had promised, stood to greatly increase the economic value potential of their land.[21]

40. The Crown established the Native Land Court which had the effect of defeating chiefly and tribal authority and tino rangatiratanga. The native land legislation allowed for the making of title investigation applications by individuals with or without hapu sanction and awarded title to specified individuals who would be free to sell their interests to settlers.

Particulars

(a) At 1840 Ngati Hari/Ngāti Urunumia held various overlapping customary land interests with complex layers of customary rights and such rights could not be defined by absolute individual title interests within discrete boundaries as created by the Native Land Court.[22]

(b) The Crown's policy was to individualise the tribal title to all lands within the districts now part of Te Rohe Potae Inquiry.

(c) The Native Land Court commuted Ngati Hari/Ngāti Urunumia customary hapu tenure into individualised interests within discrete boundaries.[23]

(d) All of the titles awarded to Maori or Ngati Hari/Ngāti Urunumia individuals, within the districts now part of Te Rohe Potae Inquiry were awarded to individuals of the hapu rather than to the hapu itself.

(e) The Native Land Court set individual hapu rangatira on the land titles but did not record him or them as a representative of the hapu or as a trustee of hapu interests in the block.

(f) The rangatira of the hapu found themselves powerless to prevent individual members of the hapu from further fragmenting the land.[24]

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[21] Husbands & Mitchell, p.93-94.
[22] To be supported by Tangata Whenua evidence
[23] Native Land Act 1873, ss 47, 80; Williams, D., *Te Kooti Tango Whenua*, 1999, Huia publishers, p.168.

(g) From 1890 through to the end of the century and beyond, the Native Land Court in Otorohanga played a crucial role in both facilitating and validating the Crown's wholesale purchase of Maori owned land in Te Rohe Potae. In the process it contributed to the systematic undermining of chiefly authority as ownership of Maori land – and the power of alienation – which transferred from the community to individual owners.[25]

(h) Whether it was defining ownership to a piece of land, overseeing a partition, defining the interest acquired by the Crown, imposing a survey lien or simply processing an application for a succession order or appointment of trustee, the Court was not only exercising power over the people and their land but also demanding those peoples engagement and participation in its process.[26]

(i) Applications from local Maori to partition a piece of land or name a successor or trustee signified decisions that had once been decided exclusively by the community and its chiefs but were now subject to the scrutiny and judgment of the Court.[27]

(j) Thus the flow of business to the Courts – obligatory under the Native Land Law – signified in a real and substantial sense a transfer of authority and powers: a way from the authority of iwi, hapu and whanau leaders towards a judicial body whose jurisdiction was defined by statute and whose rulings were guaranteed by the power of the colonial state.[28]

41. The Crown, in breach of the Treaty and its principles, established the Native Land Court that had the effect of destabilising and/or destroying traditional hapu-based systems of land tenure including land rights, use, occupation and control.

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[24] To be supported by Tangata Whenua evidence
[25] Husbands & Mitchell, p.259.
[26] Husbands & Mitchell, p.281
[27] Ibid.
[28] Ibid.

Particulars

(a) For example, faced by the imminent prospect of the Crown purchasing shares in the block, Hotutaua and Pakukohatu and others appealed for the land to be made *"absolutely inalienable"*. That land should be reserved permanently for us and our descendents for ever they told the Premier *"to be a permanent settlement for us and our dead"*.[29]

(b) Responding to this appeal for continued community and chiefly control over ancestral land, Wilkinson asserted a very different view of the circumstances surrounding Kinohaku East 1. Although conceding that *"there may be a good deal of truth" in the writer's claim to have occupied the land for several generations, the Land Purchase Officer dismissed the assertion as mere sentiment"*.[30]

(c) At the Crown's request, Judge Gudgeon reorganised the work of the Courts in that it undertook intensive invidualisation of shares in Rohe Potae Blocks to assist in Crown monopoly purchasing. Leaders such as Wahanui, Rewi Maniapoto and John Ormsby attempted to negotiate changes to the Native Land Court system that would have enabled them to maintain collective, tribal control over the title determination process as well as subsequent land management decisions.[31]

(d) Towards this end they met with Native Ministers John Bryce and John Balance over a period of several years, securing assurances from each in turn that their concerns would be dealt with through reforms of the Court and the Native Land Laws.[32]

(e) Such public assurances, accompanied with developing personal relationships of mutual trust the leaders such as Wahanui believed they had been able to establish with the Ministers of the Crown, appeared to have been factors that influenced the

[29] Husbands & Mitchell, p.259.
[30] Husbands & Mitchell, p.200.
[31] Husbands & Mitchell, p. 178-180.
[32] Ibid.

tribal leaders ultimate decision to place their land before the Court.[33]

(f) Despite the promises made by Government Ministers, the Native Land Court system was not reformed in the manner Te Rohe Potae tribal leaders hoped. The closest the Crown came to acceding to Maori demands that control of the land title and determination process be placed in community hands with the Native Committees Act 1883, which in the Te Rohe Potae District led to the creation of the Kawhia Native Committee.[34]

(g) Despite repeated calls from committee members and other tribal leaders for the committee's powers to be increased to allow it to determine land title, this never occurred. Unable to use their own committee to secure their preferred option by defining the ownership of their land, tribal leaders turned reluctantly to the Court as the only body that could secure their rights by granting a title.

(h) While tribal leaders of the Rohe Potae District recognised the need for state sanctioned land titles in the period leading up to the 1886 application for an investigation of title to the Rohe Potae Block, they repeatedly expressed concern that the Native Land Court in its existing form was not the appropriate body to define land ownership.[35]

(i) They wanted tribal or pan-tribal bodies, such as the Kawhia Committee, to be empowered to undertake that task.[36]

Failure to Properly Provide for Ngati Hari/Ngāti Urunumia Land Interests

42. The Crown, in breach of the Treaty of Waitangi, established the Native Land Court that failed to properly inquire into nor recognise and provide for Ngati Hari/Ngāti Urunumia customary interests in its hapu lands.

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[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] Ibid.

Particulars

Rangitoto-Tuhua Block

(a) On 23 October 1888, an application was made to the Native Land Court by Henry Edwards for the Rangitoto-Tuhua Block which proposed to set out the boundaries, names of applicants, hapu that related to the block. He also produced a map of the block.[37]

(b) The Court was advised on the 5th of November 1888 by Edwards again that difficulties had been worked through and that lists to the block would be sent in as the people intended to proceed to partition the land among the different hapu. When done these would be handed in to Court.[38]

(c) In June 1889, when the application for hapu subdivision was presented on two separate occasions, the matter was adjourned due to challenges from objectors to the application.[39]

(d) Then in May 1890, due to the application being further adjourned, the Court was advised by hapu that until boundaries had been fixed, hapu did not intend to provide their lists of names.[40]

(e) Then in August 1900 the Land Purchase Officer, Wilkinson reported to the Under Secretary of the Native Land Purchase Department the activities of certain European and natives in connection with negotiations for the purchase of totara timber upon subdivisions of the Rangitoto-Tuhua Block which titles had lately decided upon by the Appellate Court,[41] for the timber was as much as 4/- per 100 feet.[42]

(f) Wilkinson noted that title to the land had not yet been decided by the Native Land Court. Sheridan replied that it was not a

[37] Paula Berghan, Block Research Narratives Report, Te Rohe Potae #A60, p.892.
[38] Berghan #A60, Ibid.
[39] Berghan #A60, Ibid, p.893.
[40] Berghan #A60, Ibid, pp.893-894.
[41] Berghan #A60, Ibid, p.894. (Whatitokarau).
[42] Berghan #A60, Ibid, p.894.

matter which the Land Purchase Department was particularly concerned with.[43]

(g) The initial partition of the block occupied the large part of an entire year as the Court investigated title, ruling on ownership; set boundaries; adjudicated ownership lists; and defined individual interests.[44]

(h) Some of the subdivisions of Rangitoto-Tuhua were arranged *"amicably"* amongst the owners themselves, with the Court required to do no more than officially approve what had been informally agreed. Others however were fiercely contested, necessitating a full hearing of evidence followed by a formal judgment.[45]

(i) The competing claims for Rangitoto-Tuhua No 2. (Pukuweka) were heard over five days between 25 and 30 August 1897.[46]

(j) Amongst the blocks arranged by prior agreement and passed without objection were No. 2 (Pukuweka), No. 7 (Ngakonui) and No. 8 (Apawaka). The list of names for the first two – which were to be vested in the descendants of Ngatu and Hinerangi respectively – were presented to the Court and passed without objection on 24 February 1898.[47]

(k) After a hiatus in 1899, the Court returned to the partition of Rangitoto-Tuhua. Sitting in Te Kuiti from the end of October until the end of November 1900, the Court heard evidence and made orders regarding the ownership lists and boundaries of fourteen separate subdivisions of the massive block.[48]

(l) The Otorohanga Court subdivision of Rangitoto-Tuhua also provoked a number of appeals. In May 1900 for example, the Native Appellate Court sitting at Te Kuiti re-heard the cases for the Pukuweka, Hikurangi, Whatitokarua and Taraunui

[43] Berghan #A60, Ibid, p.894.
[44] Husbands & Mitchell, The Native Land Court Land Titles and Crown Land Purchasing in Te Rohe Potae District 1866-1907, draft 19 September 2011.
[45] Ibid.
[46] Ibid.
[47] Husbands & Mitchell, p. 284, fn.1056.
[48] Ibid, p. 276.

subdivision while in October 1902 the Appellate Court at Otorohanga re-examined the case of Rangitoto-Tuhua 69 and 70.[49]

(m) In ruling on the ownership of the Pukuweka Block (Rangitoto-Tuhua No. 2) that had been contested by Ngati Maniapoto and Whanganui, Judge Gudgeon criticised the Maniapoto witnesses for what he saw as their repeated stonewalling of the Court on historical questions that threatened to undermine the strength of their claim.[50]

(n) As reported by the Judge, the manipulation of evidence to fit the demands of an adversarial process was even more flagrant in the contest over Whatitokarua and Taraunui. In his judgment for the Taraunui Block Gudgeon expressed the firm opinion *"that for the most part of the true history"* of the land had *"been designedly withheld from the Court in order to defeat the claims of the real owner".*[51]

(o) Amongst the orders overturned by the Appellate Court were those concerning the ownership of the Pukuweka (Rangitoto-Tuhua No. 2) and Rangitoto divisions of Rangitoto and Tuhua. [52]

(p) The investigation of title to Pukuweka had pitted hapu with connections to Ngati Maniapoto against those with links to Whanganui. Despite criticising their testimony Judge Gudgeon had awarded the contested land to the Maniapoto side. The Appellate Court reserved this decision, granting it instead to the Whanganui appellants.[53]

The following are blocks that Ngati Hari/Ngati Urunumia have interests in that were determined by the Native Land Court without appropriate or adequate recognition of Ngati Hari/Ngati Urunumia customary interests

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[49] Ibid, p.284.
[50] Husbands & Mitchell, p.405.
[51] Ibid.
[52] Husbands & Mitchell, p.423.
[53] Ibid.

Rangitoto Tuhua No.1

(a) A note on the Block Order File records that the order on Investigation of Title Rangitoto-Tuhua No.1 (Pukuweka-Orangituki) block was wrongly cancelled on 21 January 1908 and new orders were made on 7 February 1908. These orders were annulled by The Native Appellate Court and the original Order reinstated on 25 August 1908. The land was then sold to Daniel Long by resolution under part XVII.[54]

Rangitoto Tuhua No.2

(a) On 23 November 1897, an order was issued for the Rangitoto-Tuhua No. 2 block covering 1,500 acres and awarded to 110 owners. This order was later cancelled.[55]

(b) On 17 August 1900 another order was issued for the Rangitoto Tuhua No. 2 block containing 2,764 acres and awarded to 228 owners.[56]

(c) On 8 December 1903 the Rangitoto-Tuhua No. 2 block was partitioned into A to F subdivisions. These orders were later cancelled.[57]

(d) On 9 February 1915 the No. 2 block was again partitioned into subdivisions A to H.[58]

(e) On 23 August 1960 Rangitoto-Tuhua No. 2C block was consolidated.[59]

(f) On 12 August 1963 consolidation orders were issued for 2C2 block.[60]

[54] Berghan #A60, p.917.
[55] Berghan #A60, p.918.
[56] Berghan #A60,, p.918.
[57] Berghan #A60,, p.918.
[58] Berghan #A60,, p.918.
[59] Berghan #A60, p.919.
[60] Berghan #A60, p.919.

Rangitoto Tuhua No. 7

(a) Within this block is Rangawhenua's hahi. One of his whare wananga was at Papawaka pa in this nlock and this is where his people practiced the Paomiere Faith before he moved to Miringa Te Kakara. [61]

(b) On 24 February 1898 an order was issued for the Rangitoto-Tuhua No 7 block and awarded to 85 owners. This order was later annulled by the Court.[62]

(c) On 15 August 1900 another order was issued for Rangitoto-Tuhua No. 7 block containing 96 acres and awarded to 21 owners.[63]

(d) On 11 March 1918 the block was partitioned into A and B blocks.[64]

(e) On 22 February 1950 the Rangitoto-Tuhua No. 7A block was further partitioned.[65]

(f) In 1949 Rangitoto-Tuhua No. 7B block was recorded as being sold.[66]

Rangitoto Tuhua No. 8

(a) On 23 November 1897 an order was issued for the Rangitoto-Tuhua No. 8 block containing 200 acres and was awarded to 149 owners[67].

(b) On 17 August 1900 an order was issued for the Rangitoto-Tuhua No. 8 block containing 300 acres and awarded to 1 owner.[68]

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[61] To be supported by tangata whenua evidence
[62] Berghan #A60, p.922.
[63] Berghan #A60,, p.922.
[64] Berghan #A60, p.922.
[65] Berghan #A60, p.923.
[66] Berghan #A60, p.923.
[67] Berghan #A60,, p.923.
[68] Berghan #A60,, p.923.

Rangitoto Tuhua No. 9 and Rangitoto Tuhua No. 10

(a) Theses blocks were customarily part of the Ngati Huru and Ngati Hari/Ngāti Urunumia bird hunting grounds.[69]

(b) When the Crown started logging the blocks this meant a loss of bird life and part of the food basket of Ngati Huru and Ngati Hari/Ngāti Urunumia.[70]

(c) Further there are wahi tapu and burial grounds in the cliffs on the DOC lands in and around the gulleys.[71]

(d) On 22 March 1898 an order was issued for the Rangitoto-Tuhua No. 10 block containing 6,070 acres.[72]

Rangitoto Tuhua No. 21

(a) Within the Rangitoto Tuhua 21 block is an old kainga of Ngati Huru and Ngati Hari/Ngāti Urunumia called Ngairo Kainga. It is an old name that comes from Kawhia and relates to when the Tainui Waka was exploring the West Coast and Hoturoa and Rakataura set up a number of tuahu. The tohunga of Taunui waka ws Rakataura and set up a tuahu called Ngairo between Raglan and Kawhia and the name has stuck to this area.[73]

(b) When the Crown took the Rangitoto Tuhua 51 block for survey liens, Ngati Huru owners were eventually pushed down into the Rangitoto Tuhua 21 block.[74]

(c) On 1 June 1898 an order was issued for the No. 21 block containing 7,157 acres and was awarded to 142 owners. This number was varied later.[75]

(d) On 15 August 1900 another order was issued for the block containing 7,157 acres and awarded to 207 owners.[76]

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[69] To be supported by tangata whenua evidence
[70] To be supported by tangata whenua evidence
[71] To be supported by tangata whenua evidence
[72] Berghan #A60, p.923.
[73] To be supported by tangata whenua evidence
[74] To be supported by tangata whenua evidence
[75] Berghan #A60, p.923.

(e) On 21 February 1908 the Crown's interests were defined in the block.[77]

(f) During 1913 two sales were recorded. In 1947 a lease of a grant for timber cutting rights was negotiated and in 1956 one sale was recorded.[78]

(g) Now Ngati Huru have only 42 acres left for their use (Rangitoto No21B 2A 2A 2) which was a farm but has in recent times reverted to its natural state.[79]It is a land locked block.

(h) There are two other small pieces of land in Rangitot Tuhua 21 which are still Maori owned but are all in native bush and are land locked.[80]

Rangitoto Tuhua No. 52

(a) One sale was made in 1914. From 1932 through to 1938 leases and sales were recorded. In 1948 and 1955 two sales were recorded.[81]

Rangitoto Tuhua No. 56

(a) On 11 July 1898 an order was issued for the Rangitoto-Tuhua No. 56 block containing 1,988 acres and was awarded to 4 owners.[82]

Rangitoto Tuhua No. 66

(a) Within this block is a pa site called Otutewehi. This was the pa site of Te Kanawa of Ngati Huru. Te Kanawa constructed the Pa tangata with his warriors and then other hapu of Ngati Maniapoto came to use these lands especially those of Ngati Hari/Ngāti Urunumia as a refuge.[83]

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[76] Berghan #A60, p.923.
[77] Berghan #A60, p.923.
[78] Berghan #A60, p.925.
[79] To be supported by tangata whenua evidence
[80] To be supported by tangata whenua evidence
[81]Berghan #A60,, p.966.
[82] Berghan #A60, p.972.
[83] To be supported by tangata whenua evidence

(b) On 28 November 1900 an order was issued for the Rangitoto-Tuhua No. 66 block containing 9,000 acres and was awarded to 126 owners.[84]

(c) On 7 December 1906 the Rangitoto-Tuhua No. 66 block was divided into A and B blocks.[85]

(d) On 4 February 1920 Rangitoto-Tuhua 676B block was further partitioned.[86]

(e) On 9 February 1923 Rangitoto-Tuhua 66A block was further partitioned.[87]

(f) Further partition orders were issued in the 1920's.[88]

(g) Later orders were issued.[89]

(h) Rangitoto-Tuhua 66A3A2 containing 886 acres 3 roods 27 perches formed part of Taringamotu block.[90]

Rangitoto Tuhua No. 67

(a) On 16 November 1900 an order was issued for the Rangitoto-Tuhua No. 67 block containing 10,365 acres and was awarded to 75 owners.[91]

(b) On 14 February 1904 the Rangitoto-Tuhua No. 67 block was partitioned into subdivisions A to E.[92]

(c) On 12 April 1910 the Rangitoto-Tuhua 67B block was further partitioned.[93]

(d) On 5 May 1911 Rangitoto-Tuhua 67A block was further partitioned.[94]

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[84] Berghan #A60, p.985.
[85] Berghan #A60, p.985.
[86] Berghan #A60, p.985.
[87] Berghan #A60, p.985.
[88] Berghan #A60, p.986.
[89] Berghan #A60, p.986.
[90] Berghan #A60, p.986.
[91] Berghan #A60,, p.988.
[92] Berghan #A60, , p.988.
[93] Berghan #A60, p.988.
[94] Berghan #A60, p.988.

Rangitoto Tuhua No. 73

(a) Another name that Ngati Hari/Ngāti Urunumia had for this block is Te Uranga[95]

(b) On 22 November 1900 an order was issued for the Rangitoto-Tuhua No. 73 block containing 1,494 acres and was awarded to 96 owners.[96]

(c) On 20 November 1906 the Rangitoto-Tuhua No. 73 was partitioned into subdivisions A and B for definition of the Crown's interests.[97]

(d) On 22 March 1915 Rangitoto-Tuhua No. 73B block was further partitioned off.[98]

(e) On 12 June 1924 Rangitoto-Tuhua No. 73B1 block was partitioned.[99]

(f) On 18 May 1938 Rangitoto-Tuhua No. 73B1A block was consolidated.[100]

(g) In 1929 two alienations were recorded in regard to a timber lease and sale. In 1934 one sale was recorded.[101]

Rangitoto Tuhua No. 74

(a) On 27 November 1900 an order was issued for the Rangitoto-Tuhua No. 74 block containing 16,317 acres.[102]

(b) On 20 November 1906 the Crown's interests were defined.[103]

(c) Further partition orders were issued in the 1920's and early 1930's.[104]

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[95] To be supported by tangata whenua evidence
[96] Berghan #A60, p.1002.
[97] Berghan #A60, p.1002.
[98] Berghan #A60, p.1002.
[99] Berghan #A60, p.1003.
[100] Berghan #A60, p.1003.
[101] Berghan #A60, p.1003.
[102] Berghan #A60, p.1003.
[103] Berghan #A60, p.1003.
[104] Berghan #A60, p.1004.

Maraeroa, Hurakia and Ketemaringi

43. Ngati Huru had tipuna who lived on the Hurakia and it was famous for its bird catching grounds and as such contests existed between hapu and iwi over those grounds.[105]

44. There are also pa sites for Ngati Huru on the Hurakia block. [106]

45. The risks of non-engagement with the Court had been reinforced by the exclusion of some groups from the title of the Maraeroa, Hurakia and Pouakani blocks at the Courts title investigation hearing of the Tauponuiatia Blocks. [107]

46. On 24 March 1886 at the opening of the Maraeroa Block title investigation Te Heuheu Tukino provided evidence as claimant by noting that Ngati Karewa, claiming from the eponymous ancestor Karewa through Tuwharetoa Tia was the only hapu to have a claim in the block. [108]

47. There are a number of counter claimants to the claims of Te Heuheu Tukino led by Hori Pirihi. [109]

48. After identifying the claimants and counter claimants and the ancestors they claimed under, the Court expressed a view that the claims and counter claims through ancestry could not be sustained. [110]

49. Having noted this, Judge Scannell recorded that "whilst the hapu held the opinion that the hapus counter claiming cannot sustain their rights as hapus, it cannot ignore the fact that they have intermarried with Ngati Karewa and that some members of those hapus have probably acquired rights through *permissive occupation*".[111]

50. Despite the receipt of this judgment it was almost a year before the Maraeroa title was brought before the Land Court to be finalised with

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[105] To be support by tangata whenua evidence.
[106] Husbands & Mitchell, p. 102.
[107] Berghan #A60, p.1007
[108] Berghan #A60, p.1007
[109] Berghan #A60, p.1007
[110] Berghan #A60, p.1008
[111] Berghan #A60, Ibid.

the arrangement of owners' names. On 14 February 1887, lists were presented to the Court and evidence was heard and decisions made over those names that were objected to. Finally on 12 June 1887 a total of 149 persons were admitted to the block as follows:

Ngati Karewa	122 person
Ngati Matekore	32 persons
Ngati Rereahu	15 persons

51. However in June 1887, Taonui asked that the matter of Maraeroa be investigated by the Court. Taonui said the land was in fact part of the Rohe Potae block and that this was the first time the real owners had been able to press the matter and they had applied for a rehearing.[112]

52. On 30 June 1887 the Court informed Taonui that it could not promise a rehearing of Maraeroa as the land had not completely passed through the Court. Only after judgment was given could an application for rehearing be considered. [113]

53. Taonui restated his desire for a Maraeroa-Hurakia rehearing on 2 and 5 July. On the latter date the Court informed him that a reply had been received from the Under Secretary of Native Affairs to the effect that "No application for rehearing can be dealt with until the Taupo cases were closed. [114]

54. The Court decided to adjourn until 19 July to allow time for consideration of the matter. [115]

55. On the 20 July Taonui summarised his dilemma:

"A portion of Rohe Potae is included in Tauponuiatia block.....Therefore I say let Hurakia be first dealt with. Te Heuheu and Taupo Court have stolen my land. I do not want to lose my land. I am anxious to see the rehearing gazetted".[116]

56. The Court agreed to a long adjournment and set the date of 12 October.[117]

57. Taonui continued his objections to the Native Land Court proceeding

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[112] Berghan #A60, p. 484-485.
[113] Berghan #A60, Ibid.
[114] Berghan #A60, Ibid.
[115] Berghan #A60, Ibid.
[116] Berghan #A60,, p. 486.
[117] Berghan #A60, Ibid.

with Maraeroa through 1888. Several petitions were sent to the government and on 9 August 1888 the Native Affairs Committee of The House of Representatives considered the following:

Petition no. 204: Taonui Hikaka and 128 others that his petition was rejected in August 1889).
Petition no. 260: Te Papanui Tamahiki and 96 others
Petition no. 416: Hitiri Te Paerata and 110 others[118]

58. The minutes of the committee hearing indicate the principal grievance was that Ngāti Raukawa and Ngāti Maniapoto interests had been left out of titles awarded in the Taupōnuiatia block, and there was considerable suspicion about the role of the three Grace brothers in the Native Land Courts hearings and subsequent land purchases.

59. On 9 July 1889, the government appointed a royal commission to enquire into the boundary between Ngati Maniapoto and Tuwharetoa and into other matters relating to the Taupōnuiatia block.

60. The matters to be inquired into by the Tauponuiatia Royal Commission were set out as follows:

(a) Whether the boundary of the said block of land called Tauponuiatia is the correct boundary.

(b) Whether the Native chief Hitiri Paerata has suffered any injustice in consequence of his claim to a block of land known as Pouakani having, in consequence of some misapprehension, been unsatisfactorily dealt with; and whether he or his people have any just cause of complaint.

(c) Whether Karawhira Kapu was induced by a Land Purchase Commissioner in the employ of the Government to forego large claims to land of her own and of her relations in consequence of promises made to her by the Commissioner, which have not been fulfilled or carried out.[119]

61. The Commission's report was completed on 17 August 1889. The outcome of the Commission was that there was enough evidence and

[118] The Pouakani Report 1993, Waitangi Tribunal, Chapter 8, 8.5
[119] Ibid, Chapter 8, 8.5

doubt over the Western boundary of the Taupōnuiatia west block for that part to be re-considered.

62. The result of this was the Government considered that a re-investigation of the Pouakani and Maraeroa blocks needed to be undertaken by the Native Land Court. Section 29 of the Native Land Court Acts Amendment Act 1889 was enacted, altering the boundary of the Taupōnuiatia block, converting Pouakani, Pouakani No 2, Kaiwha, Hapotea and Maraeroa blocks back to Maori customary land, so that title can be reinvestigated, and authorising Native Land Court to charge costs of survey of old and new boundaries to the owners of Maraeroa block.[120]

63. Finally on 24 August 1891 the Courts did readdress the issue when Te Paehua Matekau set up a case. [121]

64. Te Paehua claimed through the ancestor Kahu and claimed that there was three divisions of the block (for which boundaries were given):

Maraeroa proper owned by the hapu Ngati Matakore, Ngati Whakatere, Ngati Poutu, Ngati Karewa, Ngati Tarapikau, Ngati Maniapoto and Ngati Rerehau

Ketemaringi owned by Ngati Punga and Ngati Tipi descendents of Tamaio.

Hurakia owned by Ngati Huru, Ngati Parekaihina, Ngati Toreihu, Ngati Ruahine, Ngati Peehi, Ngati Rereahu and Ngati Hinemata.[122]

65. Paehua specifically noted that Ngati Huru and other hapu were owners in the Hurakia block. [123]

66. Paehua also mentioned that the claimed hapu had many kainga, burial grounds, bird snaring places and eel fisheries from Maraeroa to Hurakia. [124]

67. During the course of the hearings, extensive evidence was given by cross claimants to the block as well as rebuttal evidence presented by Paehua in relation to the claims that he had made to the Court. In addition, on 9 September Ngahinu Te Roore of Ngati Huru was sworn

[120] Ibid, Appendix 5
[121] Berghan #A60, p. 486.
[122] Berghan #A60, p. 486-486.
[123] Berghan #A60,. 486-486
[124] Berghan #A60, Ibid.

and gave evidence in the claimant case. Ngahinu had lived at a kainga called Ngapukanohi on Hurakia and had a claim to Hurakia as a descendent of Maniapoto. The boundary between the Taupo tribes and Ngati Maniapoto followed the Hurakia range. [125]

68. This evidence was supported by Takiterawhiti Te Kuri on 12 and 14 September where his evidence stated:

"The only kainga on Hurakia now before the Court is Ngapukanohi. That was the settlement of Ngati Huru, Ngati Hinemata and Ngati Pehi,[126]

69. In response, Papanui gave evidence to rebut the claimants evidence regarding Hurakia. He spoke of Ngapukanohi kainga and stated:

"Ngapukanohi is immediately South West of Pakihi...My ancestor down to my parents and self have occupied the lands from Maniaiti to Ngapukanohi".[127]

70. Papanui also spoke about the intermarriage between Ngati Hari/Ngāti Urunumia, Ngati Uekahu and Ngati Peehi:

"By this intermarriage my matuas and these hapus occupied together, that is they occupied one side of the range and my matuas the other".[128]

71. On 22 September 1891 the Maraeroa-Hurakia judgment was delivered. The block was awarded to the various hapu named in the prima facie case. [129]

72. On 12 December the Court delivered its judgment on the Maraeroa lists. [130] Further orders were made for various blocks. Notably Hurakia containing 2,572 acres in favour of Taiki te Rawhiti te Kuri and others, and Maraeroa B Section 1 containing 4,000 acres in favour of Taonui Hikaka, and Ketemaringi in favour of Rauroha Te Ngare and others. [131]

73. On 6 April 1892 the Under Secretary for the Native Land Purchase Department, P Sheridan, telegraphed the Land Purchase Officer

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[125] Berghan #A60, p. 498.
[126] Berghan #A60, p. 499.
[127] Berghan #A60, p. 500-501.
[128] Berghan #A60,, p. 501.
[129] Berghan #A60,, p. 504
[130] Berghan #A60,, p. 504
[131] Berghan #A60,, p. 505

George Wilkinson the Maraeroa B block which had been offered Taonui Hikaka at 5/- an acre. He noted, however, that an application had been made for rehearing "stops everything for the present". [132]

74. On 23 December 1893, Mr D Stubbing, the surveyor, wrote to Sheridan notes that the Chief Surveyor had informed him that the Government were purchasing Maraeroa A1, A and B1 sections. He therefore asked whether the Government would pay for the surveys when finished. [133]

75. On 16 June 1897 Wilkinson forwarded the details of the purchase of the Maraeroa sections. In particular, the information regarding the following:

Maraeroa B Section 1 – 3,995 acres
Price 3/- per acres less survey lien of £97.12.8.
3,995 acres @ 3/- = £599.5.0.
£501.12.4 paid to owners. The whole block acquired by Government[134]

76. Between 1901 and 1908 further subdivisions of Maraeroa A & B blocks occurred to define the interests acquired by the Crown through purchase. [135]

77. With regard to the Hurakia block, tables show that current Maori land holdings amount to only 1,775.8 acres of the original area of 6,572 acres and that the only known alienations were in favour of the Crown. [136]

78. There are no current Maori land holdings in the Ketemaringi block all of which has been alienated, the total area having been alienated to the Crown. [137]

79. The alienation of Ketemaringi 1 in the amount of 4,610 acres occurred in 1899 in favour of the Crown. [138]

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[132] Berghan #A60, p. 506.
[133] Berghan #A60,, p. 507.
[134] Berghan #A60, p. 508
[135] Berghan #A60, p. 509.
[136] Alienation of Maori land within the Te Rohe Potae inquiry district 1840-2010: A quantitative study; Part 1 & 2; 11/06/2010; T Douglas, C Innes, J S Mitchell, #A21Table ID, #3001. The Crown awards total 3,382.4 acres.
[137] Mitchell & Innes #A21, Table ID, #3002.
[138] Mitchell & Innes #A21 Ibid,.

80. The alienation of Ketemaringi 2 of 1,390 acres in favour of the Crown occurred in 1921.[139]

Maraetaua

81. On 26 November 1892, Hari te Whanonga claimed Te Pukenui and Maraetaua under the general block named Te Kumikumi. The land was claimed for Ngāti Urumumia under the ancestor Kumikumi.[140]

82. Taonui Hikaka for Ngāti Rora (Ngāti Huru), admitted he derived his right to the southern part of the block (Maraetaua) from the ancestor Kumikumi but he claimed the northern part (Te Pukenui) for the descendents of Rora. [141]

83. Ngāti Hari/Ngāti Urunumia and Ngāti Rora therefore agreed the title to Maraetaua was based on the right of Kumikumi but disagreed over Te Pukenui. [142]

84. In its judgment of 9 January 1893 the Court noted that any difference regarding Maraetaua between Ngāti Hari/Ngāti Urunumia and Ngāti Rora (who both acknowledged the ancestor Kumikumi) would be settled when lists of names were presented. The only real counter claimant in Maraetaua was Te Matapihi Maratini who claimed two small areas of land on the eastern boundary involving only around 400 acres of the block as part of a gift made by Ngāti Rora. [143]

85. The Court dismissed the claim of Te Matapihi Maratini and awarded the Maraetaua block to the descendents of the ancestor Kumikumi. [144]

86. On 28 September 1907 the Native Land Court made orders for the Maraetaua block as set out in the table. [145]

87. Contained within the subdivision of the block were three subdivisions that contained "ururpa" and they were blocks 11, 12 and 13 vested in

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[139] Ibid.
[140] Berghan #A60, p.512
[141] Berghan #A60, Ibid.
[142] Berghan #A60, Ibid.
[143] Berghan #A60, Ibid.
[144] Berghan #A60,, p.513.
[145] Berghan #A60, Ibid.

two owners and one owner respectively. [146]

88. There was extensive subdivision of the Maraetaua which comprised originally 8,594.6 acres.[147]

89. The bulk of the Maraetaua Block of 4,033.3 acres ended up in Crown hand, most of that going in the period between 1900 and 1909.[148]

90. Private purchasing also accounted for 3,272.6 acres (44.8%) of the block which occurred in the period between 1910 and 1979. Further Crown alienations occurred in the period between 1930 and 1939 in favour of the Crown. [149]

91. Today only 160.9 acres are still held in Maori hands and that is contained in Maraetaua No. 4B1A and No. 4B1B.150 The balance appear to have been lost by way of survey costs and other liens.

Costs of the Native Land Court Process

92. The Crown, in breach of the Treaty and its principles, established the Native Land Court which fostered debt, most often to be repaid in land, arising out of substantial court costs and associated costs such as interpreters and legal fees, and food, supplies, and accommodation costs.

Particulars

(a) Participation in the Native Land Court process was not free. The fees for having a case heard by the Court was £1 per day for each party.[151]

(b) In addition, parties were charged 2s for the swearing of each new witness. On top of the charges of having their case heard by the Court, Maori land owners also faced a number of other fees. The fee for a Certificate of Title or *"any other order conferring title of land was £1'.* Succession orders cost 5s each.

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[146] Berghan #A60, pp 513-514.
[147] Maraetaua Block, Tables, Mitchell & Innes #A21, Table ID #2154
[148] Ibid.
[149] Ibid.
[150] Ibid, Berghan #A60,, p.523.
[151] Husbands & Mitchell, p.281.

5s is also the charge of filing an application for the appointment of a new trustee or for approval of sale or lease by trustee.[152]

(c) "Clients" of the Court were also charges 10s for filing an application for an exchange or partition of a piece of land, £5 for filing an application for re-hearing and 2s 6d for the inspection of any record.[153]

(d) The hearing of the Whatitokarua and Taraunui subdivisions of Rangitoto-Tuhua, to cite a particular lengthy example, consumed 41 sitting days not counting adjournment and the time the Court spent inspecting the land.[154]

(e) The cumulative affect of successive court fees, levied as a piece of land was taken through the various stages of the Native Land Court process, is illustrated by the case of *Pirongia West.*

(f) The fees for this case which ran for five days between 22 and 26 March with the Court's decision being delivered on Monday 28 – paid up to £7.6s.[155]

(g) Engagement with the Court, which was unavoidable if Maori wanted to maintain legal control and use of their land, brought significant costs for the people of Te Rohe Potae. Court fees had to be paid for each day a case was before the Court and for every order made. Participants in the Court process also had to shoulder the expense of travelling to Court and feeding and accommodating themselves while they waited for their business to be dealt with. They also might suffer additional and direct losses as a result of being obliged to be aware from their cultivations or from illnesses contracted while at Court.[156]

The Operation of the Native Land Court in hearings was unfair and caused prejudice

93. The Crown, in breach of the Treaty and its principles, established the

[152] Ibid.
[153] Ibid.
[154] Ibid.
[155] Ibid. p.281-282.
[156] Husbands & Mitchell, p.271.

Native Land Court during the Ngati Hari/Ngāti Urunumia hearings in a manner that was unfair and prejudicial to Ngati Hari/Ngāti Urunumia because:

(a) The hearing process in almost all cases went too quickly for the hapu to keep pace with;

(b) The Court failed to provide any or any adequate notice of hearings or scheduled hearings for different blocks over the same period and the Court was not prepared to re-hear cases on the basis that hapu had been unable to attend;

(c) The Ngati Hari/Ngāti Urunumia rangatira were unfamiliar with the Native Land Court process.

Particulars

(a) In agreeing to the Court's investigation of title to their ancestral estate in 1886, Wahanui and the other leaders of the five tribal alliance secured a number of concessions from the Government with regards to the location and operation of the Court.[157]

(b) The hearing of the Te Rohe Potae block was to be held in a kainga of their choosing – Otorohanga – rather than in a frontier settlement such as Cambridge, Kihikihi or Alexander.[158]

(c) The Presiding Judge was to be fluent in te reo Maori and acknowledgeable in Maori tikanga. European lawyers and agents would be barred from participating in the Court proceeding. Most significantly, the Government promised to refrain from any land purchasing activity until title to the land under investigation had been defined by the Court.[159]

(d) Following the initial victory of the five tribes in the Rohe Potae case, they did succeed in carrying a degree of tribal control over the subdivision of the block. This tribal authority was however circumscribed by the fact that the Court had the final say over all decisions.[160]

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[157] Husbands & Mitchell,p.514.
[158] Ibid.
[159] Ibid.
[160] Ibid,

94. The Crown in breach of the Treaty and its Principles exercised undue influence in the operations of the Native Land Court in that it provided itself with the power to adjourn sittings of the Native Land Court in the region and did so to its own advantage.

Particulars

(a) The Governor also held the authority to stop any case before the Court at any time.[161]

(b) While this appears to be largely a simple administrative procedure, it is also apparent that the executive branch of the Government could and did influence which applications were carried forward to hearing and when.[162]

(c) Ngati Maniapoto and Raukawa leaders succeeded in boycotting the Court and preventing it from moving to the subdivision of the 1886 Rohe Potae block from much of 1887 and in to 1888. They were eventually obliged to proceed however when Judge Mair threatened to take all influence over the Court proceedings out of their hands and move the Court to Kihikihi or Alexander.[163]

(d) Faced with the choice between maintaining their limited influence and no influence, the tribal leaders agreed to pursue the subdivision at Otorohanga.[164]

95. The Crown in breach of the Treaty and its principles exercised inappropriate and undue influence over the Native Land Court over the operations of the Court by working closely with the Crown instead of independently of the Crown in determining whether sittings should be held beyond the aukati.

Particulars

(a) The leaders of the tribes who supported the 1883 application had not, as is sometimes assumed, been cut off behind a ridge

[161] Husbands & Mitchell, p.54
[162] Ibid.
[163] Ibid.
[164] Ibid.

or boundary of the King Country (known as "the Aukati") as Court operations affected land and people across its boundary through the 1870 and early 1880's.[165]

(b) Leaders of the Rohe Potae tribes were frequently present, sometimes acted as participants, and occasionally initiators of Court activity affecting lands in the Waikato, Taupo, Whanganui and Taranaki.[166]

(c) One reason for this is that the tribal boundaries and land interests overlapped with their neighbours on all sides and did not conveniently stop at a definable line.[167]

(d) This fact combined with the way in which the Native Land Court treated overlapping tribal interests, meant that flexibility in a variety of different responses to the Court became a tactical necessity for tribal leaders even when they opposed the Court.[168]

(e) The legislation governing the Native Land Court in the early 1880's allowed individuals or small groups of Maori to initiate the hearing of a block. If rival claimants to a block filed their own applications, this left those wishing to avoid the Court with the choice of either participating or risking the loss of their lands through not being represented.[169]

(f) The perception that claimants to a block had an advantage in Court over those cast as counter-claimants also meant that those leaders wishing to keep their lands outside of the Court may have felt vulnerable to Court applications, rival groups or from dissident individuals or groups from within their own tribes seizing the initiative.[170]

96. The Crown in breach of the Treaty and its principles usurped the independence of the Court by engaging the Court in settlement policy

[165] Husbands & Mitchell, p.34,42,43.
[166] Ibid.
[167] Ibid.
[168] Ibid.
[169] Ibid.
[170] Ibid.

in persuading the Court to exercise its jurisdiction with a view to assisting the Crown with the implementation of the Crown's settlement policy.

Particulars

(a) Prior to 1892, the principal actors within the Court other than the Judge and assessors themselves – had been Maori.[171]

(b) After 1892, however, as the business of the Government came to consume an ever more significant portion of the Crown's time, the Crown's Land Purchase Office George Wilkinson began to increasingly occupy centre stage.[172]

(c) The central, one might even say orchestrating role of George Wilkinson in the post-1892 Court process was especially evident when the Crown's interests were being cut out from blocks where he had been purchasing.[173]

(d) As the sole permanent Government land purchasing officer in the region, Wilkinson was responsible for the purchase of almost all of the land secured for the Crown from Te Rohe Potae Maori in the decade following January 1890.[174]

(e) Between that date and September 1900, Wilkinson claimed to have personally acquired for the Government an area of 684,000 acres in the King Country.[175]

(f) As of 8 September 1900, 614,000 of the acres purchased by Wilkinson had already been declared Crown land by the Native Land Court. The other 70,000 acres were located in land that was still under purchase.[176]

(g) Having calculated the quantity of land the Crown had acquired through the purchase of individual shares and the imposition of survey charges, Wilkinson proceeded *"to hold meetings with the*

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[171] Ibid.
[172] Ibid.
[173] Ibid.
[174] Ibid.
[175] Ibid.
[176] Ibid.

non-sellers of the different blocks with a view to settling outside the Court" the question of how the land was to be divided[177].

(h) When these meetings were successful – as they usually were – a land purchase officer would appear in Court on behalf of the Crown and apply for the awards as desired. Should agreement prove impossible, the dispute would be brought before the Court with Wilkinson himself conducting the Crown's case.[178]

(i) The avalanche of applications underlined a change in orientation of the Otorohanga Court: away from the investigation and definition of tribal and hapu interests that had defined the Institutions work under Judge Mair towards the facilitation and administration of the liberal Government's land purchasing effort in the post-1892 era.[179]

(j) It also signified a major shift in the balance of power and influence within the Court itself.[180]

[177] Ibid.
[178] Husbands & Mitchell, p. 243.244.
[179] Husbands & Mitchell, pp. 242-243.
[180] Husbands & Mitchell, p.243

Surveys and Survey Costs

97. The Crown, in breach of the principles of the Treaty, forced Ngati Hari/Ngati Urunumia to pay survey costs associated with customary title investigations whether or not the tribe wished to have their lands surveyed.

Particulars

(a) The Native Land Act 1873 required the survey of lands investigated by the Native Land Court as a prerequisite to the issuing of a title.[181]

(b) The Native Land Act 1873 provided for the payment by Maori of survey costs and enabled survey liens to be placed on the title by both private interests and the Crown.[182] The Crown was able to take land in satisfaction of survey costs.[183]

(c) The Native Land Act 1886 provided for the payment by natives for any plan used or accepted by the Court in respect of money owed to any certified surveyor for any survey in which a plan was founded that any sum or part of which is still owing unpaid, that the Court make orders in favour of the surveyor that the estate and interest in the land the subject of that survey shall be charged as a payment to the surveyor of the amount so owing. That charge shall have the affect of a mortgage of such estate and interest in favour of the surveyor.[184]

(d) On many occasions, survey liens imposed by the Court could only be paid through the alienation of land in lieu of cash payment. As we see in the following chapter, such alienations could run to the hundreds or even thousands of acres.[185]

(e) Most significantly, Maori land owners were obliged to cover the costs of surveying their land. As we shall see, these costs were often substantial sometimes running to hundreds, and

[181] Section 33, Native Land Act 1873
[182] Sections 69, 84, Native Land Act 1873
[183] Section 73, Native Land Act 1873
[184] Section 81, Native Land Act 1886.
[185] Husbands & Mitchell, p.270.

occasionally thousands of pounds. The charges imposed by the Court for the survey of particular blocks placed a serious burden upon communities.[186]

(f) By far the single largest quantifiable expense experienced by those engaged with the core-process, the total sum of survey charges imposed by the Otorohanga Court between 1892 and 1907 amounted to at least £22,000.17.[187]

(g) From the Crown there were two applications *"to define interest acquired"* by the Crown and twenty applications for the imposition of survey liens (including 19 for subdivisions of Rangitoto-Tuhua).[188]

(h) On 8 May 1903, Wilkinson listed other Rangitoto-Tuhua Blocks set aside for the payment of survey costs.[189]

These were:

Rangitoto-Tuhua No. 10 – 3,000 acres;
Rangitoto-Tuhua No. 51 – 3,000 acres;
Rangitoto-Tuhua No. 56 – 2,000 acres;[190]

(i) On 7 September 1903 Wilkinson informed Sheridan *"the owners refused to accept"* the price set of 4/- per acre by the Surveyor General in the Rangitoto-Tuhua No. 56 Block containing 1,988 acres and asked for 5/- per acres *"...the railway and road run through the block. Deed already for signatures."* [191]

(j) On 16 October 1903, Sheridan minuted the Native Minister that the sum of £900 was required for the 3,488 acres of land in the Rangitoto-Tuhua Block which had been transferred to the Crown by the native owners. The money would be devoted principally to defraying the cost of survey over the main block

[186] Husbands & Mitchell Report, Part II, p.279.
[187] Husbands, Mitchell Report, Part II, p.272
[188] Husbands & Mitchell, p.288.
[189] Berghan #A60, p.903.
[190] Berghan #A60, Ibid.
[191] Berghan #A60, p.904.

and the approval of Cabinet was required: *"the liability is an old one"*.[192]

(k) On 9 August 1904, Wilkinson informed Sheridan that two owners of Rangitoto-Tuhua No. 10 block containing 6,070 acres refused to sign the Deed for the price per acre fixed by the Assistant Surveyor General, viz 2/- per acre. Instead they asked 3/- per acre.[193]

(l) The Chief Surveyor approved of the price to be offered being raised to 3/-.[194]

(m) On 20 September 1904, Percy Ward wrote to Sheridan inquiring whether or not the Government would take over the survey liens on the Rangitoto-Tuhua Blocks. He noted that if Government were not disposed to take them over he would apply to the Native Land Court under section 13 of *"The Maori Land Laws Amendment Act 1903 to have pieces cut off to satisfy the mortgages"*.[195] The blocks involved included Rangitoto-Tuhua Block Nos. 66, 73 and 74.[196]

(n) On 5 December 1904, the Chief Surveyor reported on Ward survey on Rangitoto-Tuhua subdivisions showing the approximate areas of the land which could be taken by the Government in satisfaction of the charging orders if they were transferred by Ward to the Crown.[197]

(o) On 9 March 1905, Mr P E Cheal Mining Engineer Authorised Surveyor wrote to the Native Minister requesting liens over the following Rangitoto-Tuhua Blocks No.s 77,76, and others.[198] He stated he had held the charging order since 17 July 1900.[199]

(p) On 21 March 1905, Cheal further wrote to Sheridan referring to a memorandum he had received from Judge Wilkinson of

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[192] Berghan #A60,, p.905.
[193] Berghan #A60, p.908.
[194] Berghan #A60,, p.909
[195] Berghan #A60,, p.909
[196] Berghan #A60, Ibid.
[197] Berghan #A60, Ibid.
[198] Berghan #A60, p.915.
[199] Berghan #A60, Ibid.

Otorohanga regarding his claims against the Tangitu and Otamatu Blocks Nos. 77 and 72 Rangitoto-Tuhua where the Chief Judge informed him *"he had a right to have land cut off these blocks notwithstanding that the Natives have handed the land over to the Council as no title could issue without these liens being paid"*.[200]

98. The Crown, in breach of the principles of the Treaty, failed to protect Ngati Hari/Ngati Urunumia against the loss of substantial amounts of land in satisfaction of survey costs.

Particulars

(a) The Crown was able to take land in satisfaction of survey costs.[201]

(b) The substantial burden of survey costs, along with other costs arising out of the Native Land Court process, forced into debt that was satisfied by the loss of considerable amounts of their land.

(c) Unable to pay what they owed in cash, land owners were often obliged to pay off their survey debts with land. As a result, large quantities of land that might not otherwise have been alienated – around 80,000 acres in total between 1892 and 1907 – were surrendered to the Crown.[202]

99. The Crown, in breach of the principles of the Treaty, took land from Ngāti Hari/Ngāti Urunumia in satisfaction of: interest on the survey costs; the costs of surveying out the Crown's portion of land; and, legal and other fees associated with the block.

Particulars

(a) S.40 of the Native Land Court Act 1880 allowed for the Crown to authorise and fund surveys and place a lien against the title for the costs that the Crown authorised agents to undertake surveys but instructed them to charge the Maori owners

[200] Berghan #A60, p.916.
[201] Section 73, Native Land Act 1873
[202] The Native Land Court Titles in Crown Land Purchasing in the Rohe Potae District, p. 271.

directly.[203] The owners did not have a say. These costs arose out of, albeit indirectly, the Crown's unilateral decision that the surveyor should charge directly to the owners rather than being a survey lien in favour of the Crown.

100. The Crown, in breach of the principles of the Treaty and in particular its duty of active protection, failed to provide any protections for Ngati Hari/Ngati Urunumia against excessive charging by surveyors.

Particulars

(a) The Crown governed the making of surveys under the Native Land legislation and was responsible for authorising them.

(b) There was no check on the reasonableness or otherwise of the survey costs and the costs imposed were generally excessive.

(c) The high cost of survey continued notwithstanding criticisms by Chief Judge Fenton of the Native Land Court in 1871.[204]

(d) On 18 November 1903 Te Huia Kingi wrote to the Surveyor General for the balance of the survey money of Rangitoto-Tuhua No. 21 (Ngairo block).

"That payment of this money be moved to Paraki te Aruhe Harina and me so that we can disburse the money spent for the survey of this block and the remainder divided among the Tribe. Also to consider the value of the land which was taken for the cost of the survey. Your valuation of this piece of land has not been made. We therefore appeal to you not to allow this matter to remain long before you".[205]

101. The Crown, in breach of the principles of the Treaty, deliberately used the ability to take land in satisfaction of survey costs as a strategy for obtaining land within Te Rohe Potae and breaking down the autonomy of and resistance to land alienation of the hapu.

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[203] Native Land Court Act 1880, s.39.
[204] AJHR 1871 A2a, p.11.
[205] Berghan, p.905.

Particulars

Survey Charges ordered by the Native Land Court for the external boundary and initial partition of Rangitoto-Tuhua: 1895-1905

	Acreage of Subdivision (acres	Survey Charge as Ordered by Court	Hapu
Rangitoto-Tuhua 1 (Orangiteihi)	937	£7.18.3	Urunumia
Rangitoto-Tuhua 2 (Pukuweka	2764	£39.12.6	Urunumia/Huru/Raerae
Rangitoto-Tuhua 7 (Ngakonui)	96	£11.8.0	Urunumia
Rangitoto-Tuhua 9 (Potakataka A)	12437	£332.2.3	Huru/Urunumia
Rangitoto-Tuhua 21 (Ngairo)	7157	£72.3.1	Huru/Urunumia
Rangitoto-Tuhua 51	3007	£37.13.3	Huru
Rangitoto-Tuhua 52 (Hikurangi South)	9.31	£97.11.6	Urunumia
Rangitoto-Tuhua 56	1988	£73.7.1	Urunumia
Rangitoto-Tuhua 67A	5063	£54.1.10	Huru/Urunumia
Rangitoto-Tuhua 67B	4435	£68.19.0	Huru/Urunumia
Rangitoto-Tuhua 67D	709	£46.15.6	Huru/Urunumia
Rangitoto-Tuhua 67E	163	£14.6.11	Huru/Urunumia
Rangitoto-Tuhua 73 (Otamakahi)	1494	£62.10.0	Urunumia/Huru/Raerae
Rangitoto-Tuhua 74 (Te Uranga)	16317	£255.12.10	Huru/Urunumia

Interest on Survey Lien

	Lien Ordered	Rate of Interest Charged	Original Lien	Interest Accrued on Lien	Order	New Total	Percentage Increase due to interest & fees	Hapu
Rangitoto-Tuhua 6	15/12/03	5%	£36.14.8	£8.0.4	£0.5.0	£45.0.0	22.5	Huru
Rangitoto-Tuhua 52	3/10/02	5%	£97.11.6	£6.14.6	£0.5.0	£104.11.0	7	Urunumia
Rangitoto-Tuhua 56	5/10/02	5%	£73.7.1	£5.1.1		£78.8.2	7	Urunumia
Rangitoto-Tuhua 66	27/8/02	5%	£99.0.11	£21.5.0	£0.5.0	£120.10.11	22	Huru/ Urunumia
Rangitoto-Tuhua 77	13/01/04	5%	£154.19.4	£14.4.1	£0.5.0	£169.8.5	9	Raerae

Sale blocks' defined under section 10 of the Native Land Laws Amendment Act 1896

Sale block	Original block cut out of	Acreage of sale block	Acreage of original	Hapu
Rangitoto-Tuhua 10	Rangitoto-Tuhua 9	6070	12437	Huru/ Urunumia
Rangitoto-Tuhua 51	Rangitoto-Tuhua 21	3000	7157	Huru
Rangitoto-Tuhua 56	Rangitoto-Tuhua 52	2000	9031	Urunumia

Survey Liens paid in land under section 65 of the Native Land Court Act 1894 during Crown definitions of interests cases 1897-1901

Year	Name of Block	Acreage of block	Acres purchased by the Crown	Additional acres taken in lieu of lien	Hapu
1899	Ketemaringi	6000	4484	126.0	Huru/Raerae
1901	Maraeroa B	12652	7311	865.o	Huru/Raerae
1901	Maraeroa A	18938	1299	865.5	Huru/Raerae
1901	Hurakia	5210	3155.75	158.5	Huru/Raerae

Lands paid in lieu of survey lien by non-sellers as a percentage of land left to them after the Crown's interest had been defined by the Court 1897-1901

Year	Name of Block	Acres left to non-sellers after Crown has cut out its interest	Acres taken by Crown to satisfy non-sellers share of lien	Acres taken by Crown to pay lien as a percentage of land left to non-sellers	Hapu
1901	Maraeroa B	5341	865.0	16.2	Huru/Raerae
1901	Hurakia	2095.5	158.5	7.7	Huru/Raerae
1901	Maraeroa A	17639	865.5	4.9	Huru/Raerae

Land paid in lieu of survey lien upon application of the Chief Surveyor 1906-1907

Year	Name of Block	Acreage	Acres taken in lieu of lien	Acres taken in lieu of lien as a percentage of the block	Hapu
1906	Rangitoto Tuhua 55	1548	288.75	18.7	Raerae
1906	Rangitoto Tuhua 73	1494	305.00	20.4	Huru/Raerae/ Urunumia
1906	Rangitoto Tuhua 74	16317	1245.00	7.6	Huru/Raerae

Land paid in lieu of survey lien upon application of the Chief Surveyor 1906-1907 (organised by percentage of land taken

Year	Name of Block	Acreage	Acres taken in lieu of lien	Acres taken in lieu of lien as a percentage of the block	Hapu
1906	Rangitoto Tuhua 73	1494	305.00	20.4	Raerae/Huru/ Urunumia
1906	Rangitoto Tuhua 55	1548	288.75	18.7	Raerae
1906	Rangitoto Tuhua 74	16317	1245.00	7.6	Huru/Urunumia

Proportion of land taken from Rangitoto Tuhua blocks to form 'sale' blocks under section 10 of the Native Land Laws Amendment Act 1896

'Sale Block'	Original Block 'Sale' Block cut from	Acreage of 'Sale' Block	Defined Acreage of original block	Proportion of Original Block(s) cut out to form 'Sale' Block (Maximum)	Acreage of Original Block + 'Sale' Block	Proportion of Original Block Cut out to Form 'Sale' Block (Minimum	Hapu
Rangitoto Tuhua 10	Rangitoto Tuhua 9	6070	12437	49%	18507	33%	Huru/ Urunumia
Rangitoto Tuhua 51	Rangitoto Tuhua 21	3000	7157	42%	10157	29.5%	Huru/ Urunumia
Rangitoto Tuhua 56	Rangitoto Tuhua 52	2000	9031	22%	11031	18%	Urunumia

Maraetaua

102. On 22 February 1899, Land Purchasing Officer George Wilkinson reported to the Under Secretary of the Native Land Purchase Department, P Sheridan that he proposed to commence the purchase of the Maraetaua subdivisions. He outlined the amounts of survey liens due to the Government and registered against Maraetaua No.s 2 to 7.[206]

103. On 24 February 1899, Huri Whanonga and others wrote to the Native Minister regarding the purchase of the Maraetaua Block No. 6. They stated that the land had been cut off and separated for the costs of the survey of the said block. [207]They stated:

"We have settled our price, it is 15/- per acre. The land lies well, there is no broken country on it. It is really rich land.....". [208]

104. On 7 June 1899, William Cussens, as authorised surveyor forwarded his valuations of the Maraetaua subdivisions No. 2-6. His valuations ranged between 10 to 12/per acre up to 12/215 per acre. [209]

105. Regardless of the share valuation, on 12 December 1900, Wilkinson forwarded particulars on the proportion of survey costs in each subdivision covered by the sale of Block No. 6 which was awarded to

[206] Berghan #A60, p.514.
[207] Berghan #A60, p.514.
[208] Berghan #A60, p.515
[209] Berghan #A60, pp.516, 517

the Crown on 17 December 1900. Wilkinson had provided a deed of conveyance of the Maraetaua No. 6 block required for the government at the price of 5/- per acre and noted that:

"...the natives are very disappointed, and dissatisfied, because what they consider, the small price allowed by Government for the land, will not meet the due cost for survey".[210]

Maraetaua

Name of Subdivision	Survey Lien £. s. d.	Amount paid £. s. d.
No. 1	3.1.4	3.1.4
No. 2	61.9.0	43.4.4
No. 3	46.18.2	20.11.1
No. 4	39.7.5	15.2.4
No. 5	125.1.2	88.13.7
No.6	42.4.10	27.0.5
No. 7	14.6.8	5.16.0
No. 8	3.0.8	3.0.8
	Total	**£206.10.0**

106. On 19 January 1901, Wilkinson telegraphed Sheridan regarding the balance due for the survey liens of £128.19.3 including interest. The telegraph stated:

"Shall I claim land for this out of the non-sellers portion of each participation as I cut out Crown's interest after deducting what Crown pays for shares purchased".[211]

107. Sheridan replied on 16 January,

"Let non-sellers please themselves. If they see fit to pay their share of the lien in land they can do so by consenting to an increase of the area purchased by the Crown which will obviate a division of the lien and further proceedings under section 65".[212]

[210] Berghan #A60, p.520.
[211] Berghan #A60, p.520.
[212] Berghan #A60, p.521.

Crown Purchase Policy, Practice & Acquisition of Māori Land

108. The claimants repeat, affirm and adopt the generic pleadings on Crown Purchasing Issues and Vested Lands. The claimants also allege the following specific pleadings and particulars:

Rangitoto-Tuhua Vested Lands

109. The Crown transferred much of the Ngāti Hari/Ngāti Urunumia tribal lands into the control and management of its agent the Waikato-Maniapoto District Māori Land Board and progressively from around 1905 removed any remaining tribal leadership and control over those lands.

110. The Crown, through the Waikato-Maniapoto District Māori Land Board, failed to adequately consult or obtain proper consent from the individuals or chiefs of Ngāti Hari/Ngāti Urunumia before alienating large amounts of lands from around 1910 onwards.

111. The Crown failed to protect the lands that were vested in its agent the Waikato-Maniapoto Land Board to be managed for the Maori owners.

Particulars

(a) Thirty seven blocks in Rangitoto-Tuhua (63,047 acres) including those in which Ngāti Hari/Ngāti Urunumia had interests were vested in the Waikato-Maniapoto Maori Land Board under the Native Land Settlement Act 1907.[213]

(b) Examples of Rangitoto-Tuhua blocks vested in the Board and then acquired by the Crown soon thereafter include:

(i) Rangitoto-Tuhua Block 9 of 12,340 acres;

(ii) Rangitoto-Tuhua 67D of 709 acres.[214]

(iii) Rangitoto-Tuhua 74B4 and 74B5.[215]

[213] Hearn #A70 p 386.
[214] Hearn, #A70, p 386.
[215] Hearn #A70 p 324.

Sufficient Remaining Lands

112. The Crown through its agent the Waikato-Maniapoto District Māori Land Board failed to adequately check when alienating Ngāti Hari/Ngāti Urunumia lands whether the beneficial hapū owners of the lands had sufficient other lands for their reasonably foreseeable present and future needs.

Particulars

(a) For example, in Rangitoto-Tuhua 9 (12,438 acres) the owners asked to have their interests partitioned out of the block stating: 'We desire this…that we may retain our interests for the benefit of our children. We have several children but the lands we hold are few and will not maintain our descendants.'[216]

(b) In the event the Crown acquired the entire 12,438 acre block in the space of 9 years between 1914 and 1923 leaving no lands for Ngāti Hari/Ngāti Urunumia.

Crown Purchasing Tactics

113. The Crown pursued policies and practices and passed legislation specifically designed to undermine Ngāti Hari/Ngāti Urunumia chiefly authority, and Māori customary law, over Ngāti Hari/Ngāti Urunumia lands in order to facilitate the Crown acquisition of Ngāti Hari/Ngāti Urunumia lands in the Rangitoto-Tuhua, Hurakia, Ketemaringi and Maraetana blocks.

Particulars

(a) Rangitoto-Tuhua Block was the single largest block in Te Rohe Potae Inquiry District.[217]

(b) The total acreage in the Rangitoto-Tuhua blocks acquired by the Crown in the period up to and including 1909 was 123,352

[216] Hearn #A70, p.414.
[217] Hearn, #A70, p 378

acres.[218]

(c) By 1935 the acreage of Rangitoto-Tuhua lands acquired by the Crown totalled over 203,000 acres.[219]

(d) The period from 1900 to 1910 was characterized by leasing of land, taking of land in lieu of survey liens, Crown acquisitions under the Maori Land Settlement Act 1905, investigations conducted and recommendations regarding disposal offered by the Native Land Commission and vesting under the Native Land Settlement Act 1907.[220]

(e) Crown purchasing accelerated once the Native Land Act 1909 came into force on 31 March 1910.

(f) The Crown was particularly keen to acquire blocks comprising the south-eastern sector of Rangitoto-Tuhua which included the lands of Ngāti Hari/Ngāti Urunumia.

(g) The Crown set out to and did acquire this large and compact tract of land through the acquisition of both vested and non-vested blocks.

(h) Blocks were acquired in full or in part by various methods. For example[221]:

(i) Rangitoto-Tuhua 21, 73 and 74 were acquired under the Maori Land Settlement Act 1905;

(ii) Rangitoto-Tuhua 66 and 76 acquisitions occurred under the Native Land Act 1909;

114. The Crown undertook a determined and comprehensive purchase programme designed to obtain for the Crown as much Māori land as possible from within the districts now part of Te Rohe Potae Inquiry District. In the Rangitoto-Tuhua, Hurakia, Ketemaringi and Maraetana blocks the Crown acquired the following blocks of Ngāti Hari/Ngāti Urunumia:

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[218] Hearn, #A70, pp 383, 389.
[219] Hearn, #A70, p 391.
[220] Hearn, #A70, p 380.
[221] Hearn, #A70, p 397.

Particulars

Rangitoto-Tuhua 9

(a) Rangitoto-Tuhua 9 (12,438 acres) was a key block in the south-eastern sector of Rangitoto-Tuhua blocks.[222]

(b) The bulk of Rangitoto-Tuhua 9 (12,340 acres) was vested in the Waikato-Maniapoto Land Board in May 1909.

(c) Only 2 of the approximately 300 owners attended the Native Land Commission hearing in 1907 that had recommended that the block be set apart for leasing.

(d) Most owners were unaware that the block had been vested in the Board.[223]

(e) In 1912 a petition of 60 owners called for the re-vestment of Rangitoto-Tuhua 9.

(f) In March 1913, the Board considered an application for re-vesting, signed by over 150 owners, under section 18 of the Native Land Amendment Act 1912, but declined to offer any recommendation on the grounds that 'a comprehensive scheme of roading, in respect of this and adjacent blocks is in hand, and in view also of our being advised that...the land [will] be in a position to be put upon the market within the next twelve months...'.[224]

(g) In April 1913 the owners informed the Board that they wished to retain 3,000 acres for their own maintenance and support and were prepared to recompense the Board for any expense incurred in the preparation of a scheme for roading and subdivision.[225]

(h) The Native Department took up the matter of re-vesting with the Department of Lands and Survey. The latter indicated that

[222] Hearn #A70, p.400.
[223] Hearn #A70, p.400.
[224] Hearn #A70, p.401.
[225] Hearn #A70, p.401

survey costs amounted to £244 2s 9d and suggested that if the block was to be re-vested the Crown should have the first option to purchase 'seeing that in order to get access to the Crown lands at the back it had to construct roads right through this block.'

(i) Hearn states that the two departments contemplated employing the survey charges as another means of delaying or thwarting re-vestment.[226]

(j) The Native Land Purchase Officer, Bowler, proposed that the Crown acquire the block under section 109 of the Native Land Amendment Act 1913. By that section the Crown was no longer obliged to purchase blocks owned by more than ten owners though meetings of assembled owners.[227]

(k) On 26 January 1915 80 owners attended a meeting of assembled owners and rejected a proposal to sell the entire block but agreed to transfer half the block and with the re-vesting of the balance, with all owners to have shares in both portions.[228]

(l) The Crown then acquired over a quarter of the balance of the shares stating: 'A large number of the Natives refused to sell the remainder of their interests, but I think it very probable that when they have spent the amount which they were paid by the Board, they will fall into line and sign in due course'.

(m) In April 1915, Teretiu Reupena and 25 others (largely of Waimiha) asked to have their interests partitioned out of the block stating: 'We desire this...that we may retain our interests for the benefit of our children. We have several children but the lands we hold are few and will not maintain our descendants.'[229]

(n) By October 1916 the Crown had acquired all but 1,064 acres of

[226] Hearn #A70, p.403.
[227] Hearn #A70, p.406.
[228] Hearn #A70, p.412.
[229] Hearn #A70, p.414.

the Rangitoto-Tuhua 9.[230]

(o) By October 1917 the owners retained only 400 acres.

(p) In May 1918 the Crown lodged an application for a partition and made an effort to acquire as many of the outstanding interests as possible. By July 1918 the Crown had acquired all but 255 acres.[231]

(q) By 4 July 1918 there were 42 'non-sellers' holding 16 and 259/360 shares still valued at £21. Trustees of minors were tracked down, the remaining owners were located, and the number of outstanding shares 'whittled away'.[232]

(r) The Crown's application for partition was heard in the Native Land Court in November 1918. The Crown was awarded 12,137 of the total area of 12,340 acres.

(s) The balance of 203 acres was awarded to the 'non-sellers.' That small block was located in the south-western corner of the block and adjoining their land in Rangitoto-Tuhua 66.

(t) The portion acquired by the Crown was proclaimed Crown land in February 1919.[233]

(u) The Crown then set out to acquire the remaining 203 acres. Rangitoto-Tuhua 9B of 203 acres was proclaimed Crown land in July 1923.

(v) The Crown's efforts to acquire Rangitoto-Tuhua 9 which begun in 1914 were completed within 9 years.[234]

Rangitoto-Tuhua 21

(a) To the south lay Rangitoto-Tuhua 21, a 7,208 acre block.

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[230] Hearn #A70, p.415.
[231] Hearn #A70, p.416.
[232] Hearn #A70, pp.416-417.
[233] Hearn #A70, p.417.
[234] Hearn #A70, p.418.

(b) The Crown acquired 2,941 acres of the block in 1908.[235]

Rangitoto-Tuhua 66

(a) Rangitoto-Tuhua 66 had an original area of 10,365 acres. The block was divided into 66A (7,588 acres and incorporated in November 1910) and 66B (2,724 acres).

(b) In August 1915 an order prohibiting private alienation was issued over both blocks.

(c) Rangitoto-Tuhua 66A had been leased to three lessees. The lessees and the owners granted timber-cutting rights to Ellis & Burnand over 2,770 acres in 1911. Rangitoto-Tuhua 66B was also leased.

(d) Once aware of those leases the Crown decided to take no further action to acquire the land, while serving notice that it would act if any attempt were made to private interests to purchase the land. In order to keep the order alive over 66B, the Crown acquired 6 of 94 shares. As 66A had been incorporated the Crown was debarred from acquiring the land (under section 117 of the Native Land Amendment Act 1913) although the owners could only sell with the Crown's consent.

(e) In 1917 Auckland's Chief Surveyor recommended purchase of both blocks by the Crown 'as they would work in well with adjoining Crown lands.[236]

(f) The Crown continued to acquire shares in 66B. In October 1918 the Native Land Purchase Officer reported that the faction opposing the sale had given way and that he had acquired 66 shares.

(g) By November 1919 the Crown owned all but 286 of the block's 2,745 acres. In February 1920 the block was partitioned into 66B1 of 2,609 acres and 66B2 of 157 shares. The former was proclaimed Crown land in April 1920.

[235] Hearn #A70, p.418.
[236] Hearn #A70, pp.430-431.

(h) By 1927 it had acquired 66B2 and that block was proclaimed Crown land in April 1925.[237]

Rangitoto-Tuhua 74B5

(a) In 1921 the lessee of the vested 1,135-acre Rangitoto-Tuhua 74B5 sought to acquire the freehold. The block had 34 original owners and a government capital valuation of £3,859.[238]

(b) In July 1929 the Native Land Purchase Board decided to acquire the lands. A meeting of owners was called to consider the Crown's offer of £1,065.[239]

(c) The owners rejected the Crown's offer. [240]

(d) In April 1930, Rangitoto-Tuhua 74B5 Section 4 had a Government capital valuation of £667 plus timber valued at £4,500 and allotted to the lessor.

(e) Rangitoto-Tuhua 74B5 section 5 had a Government capital valuation of £749 plus timber valued at £3,000 and also allotted to the lessor.

(f) The remainder two parts of Rangitoto-Tuhua 74B5 were valued at £1,439 and £3,123 (neither valuations including any timber).

(g) The Crown proceeded to acquire individual interests in the non-timbered blocks sufficient to cover the area sought by the lessee.[241]

(h) In 1912 the owners discovered that the Waikato-Maniapoto Maori Land Board had leased 1.25 acres of 74B4 to Ellis & Burnand for a water supply reserve but had not received any rent. The Board had leased the land but had taken no steps to arrange for rent and that no rental had been paid.

(i) The Native Land Court, considering an application for partition

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[237] Hearn #A70, p.431.
[238] Hearn, #A70, p. 523.
[239] Hearn, #A70, p. 524.
[240] Hearn, #A70, p. 524.
[241] [241] Hearn, #A70, p. 524.

of the area acquired by the Crown on behalf of the lessee, pointed out that if the Valuer General's reports on the four portions of Rangitoto-Tuhua 74B5 were correct, then the owners had been underpaid and the proposed partition was inequitable.

(j) The Court dealt with the application in December 1931 when it decided that the owners were entitled to the value of the timber (£7,500) although the block had been leased by the Waikato-Maniapoto Maori Land Board.

(k) The Court then decided that part of the shares of those who had sold their interests to the Crown were to be included in the non-sellers portion of the block.

(l) On that basis, Rangitoto-Tuhua 74B5A of 331 acres was proclaimed Crown land in March 1932.[242]

Summary of Crown purchasing in Rangitoto-Tuhua

115. The intentions of the owners of the blocks comprising the south-eastern sector of Rangitoto-Tuhua were recorded by the Native Land Commission. The owners wished to increase the area leased from 19,098 to 57,525 acres, to sell just 14,282 acres, and to retain for their own use 14,382 acres.

116. The Crown's purchase in 16 blocks up to 1922 totalled 57,110 acres and represented 59.2 percent of the original area of the blocks.[243]

117. By 1935 the Crown had acquired a substantial proportion of Rangitoto-Tuhua by:

(a) acquiring land in lieu of survey costs,

(b) purchasing under the Maori Land Settlement Act 1905; and

(c) purchasing both vested and non-vested lands (the latter often under the protection of orders) under the Native Land Act 1909.

118. By building on each group of acquisitions the Crown secured its

[242] Hearn, #A70, p. 525.
[243] Hearn #A70, p.438.

major objective, namely, the ownership of large areas cleared of their original owners.[244]

119. The Crown purchasing involved many blocks of modest size and with small groups of owners.[245]

120. The Crown expected its statutory agent, the Waikato-Maniapoto Maori Land Board, to act with respect to vested lands less as a trustee for owners than as an agent for the 'wider public interest.'[246]

121. The Crown believed or was content to assume that Maori owners could not be entrusted to deal with their own property.[247]

122. Underlying the Crown's purchasing programme in the Rangitoto-Tuhua area was a conviction that all the original owners required were small subsistence reserves.[248]

Ketemaringi and Hurakia

123. On the eastern boundary of the Rangitoto-Tuhua blocks lay the Ketemaringi and Hurakia blocks in which Ngāti Hari/Ngāti Urunumia had interests.

124. The Crown had acquired 4,610 acres of the 5,971 acre Ketemaringi in 1899.

125. The Crown acquired 3,257 acres of the 5,186 acre Hurakia in 1901 and a further 125 acres in 1908.

126. Hurakia B2 of 1,770 acres had been vested in the Waikato-Maniapoto Maori Land Board.[249]

127. By 1915 these two blocks were located in the midst of a large area of land acquired by the Crown that was under survey for settlement. District Surveyor T. Carroll stated that the land needed to be acquired by the Crown in order to give access to the Crown sections.[250]

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[244] Hearn #A70, p.447.
[245] Hearn #A70, p.447
[246] Hearn #A70, p. 447.
[247] Hearn #A70, p. 447.
[248] Hearn #A70, p.447.
[249] Hearn #A70, pp.419-420.
[250] Hearn #A70 pp 419-420.

128. Ketemaringi 2 of 1,390 acres was proclaimed Crown land in August 1921.

Maraeroa

129. The Crown began negotiations for the purchase of the Maraeroa sections in 1897 as follows:

Maraeroa A Section 1 – 4,000 acres
Price 3/- per acre less survey lien of £35.0.4.
4,000 acres @ 3/- = £600
£564.19.8 paid to owners. The whole block acquired by Government

Maraeroa B Section 1 – 3,995 acres
Price 3/- per acre less survey lien of £97.12.8
3,995 acres @ 3/- = £599.5.0
£501.12.4 paid to owners. The whole block acquired by Government

Maraeroa A – 18,938 acres
Price 3/- per acre less survey lien of £2,840.14.0
£2,498.10.11 paid to owners. Area acquired by Government 6,604 acres

Maraeroa B – 12,652 acres
Price 3/- per acre less survey lien of £179.18.5
12,652 acres @ 3/- = £1,897.16.0
£1,717.17.7 paid to owners. Area acquired by Government 4,187 acres (1/3 rd of block)[251]

130. Between 1901 and 1908 the following subdivisions of Maraeroa A & B blocks occurred to define the interests acquired by the Crown through purchase.

DATE	BLOCK NO.	SIZE (A.R.P)	NO. OF OWNERS
16 Mar 1901	B1	2,358/0/00	Crown
	B2	3,122/0/37	Crown
	B3	1,793/0/00	102
25 Mar 1901	A1	4,000/0/00	Crown
	A2	11,603/0/00	Crown
	A3	5,085/0/00	94
22 Oct	A3A	2,842/1/22	Crown
	A3B	2,242/2/18	43

[251] Berghan #A60, p. 508-509.

	B3A	418/3/32	Crown
	B3B	1,374/0/08	75[252]

131. Between 1915 and 1930 the following partitions occurred:

DATE	BLOCK NO.	SIZE (A.R.P)	NO. OF OWNERS
17 Jul 1915	A3B1	260/3/03	6
	A3B2	1,981/0/29	41
	B3B1	191/3/22	10
	B3B2	1.181/2/08	62
17 Jul 1915	A3B1	260/3/03	6
	A3B2	1,981/0/29	41
	B3B1	191/3/22	10
	B3B2	1,181/2/08	62
17 Apr 1916	B3B2A	124/2/00	5
	B3B2B	1,056/1/12	57
26 Jan 1923	B3B1A	87/0/00	Crown
	B3B1B	104/3/22	7
4 Feb 1924	C1	982/0/34	9
	C2	766/1/10	8
	C3	2,398/3/23	35
	C4	2,611/3/17	37
	C5	6,967/2/36	52
6 June 1930	B3B2B1	417/1/21	21
	B3B2B2	638/3/31	42[253]

132. From 1936 to 1958 the following alienations were recorded in relation to Maraeroa:

Alienation	Date	Block	Size	Lessee/ Purchaser	Term and/or Payment
Purchase	3/7/1936	B3B2B1	417/1/21	Ellis & Burnand Ltd	£3331.9.6
Purchase	3/7/1936	B3B2B2	638/3/31	Ellis & Burnand Ltd	£5079.17.10
Timber Rights	21/6/1950	C	13,727/0/00	Ellis & Burnand Ltd	Advance payment of £5000 against amount of increase in royalty rates operate after 25/11/1957
Right to Process &	22/8/1952	C	13,727/0/00	Ellis & Burnand Ltd	£75 pa from 5/7/1945 to

[252] Berghan #A60, p. 509.
[253] Berghan #A60, p. 509-510

Transport					25/11/1957
Purchase	23/7/1958	B3B1A	87/0/00	Crown	£300[254]

133. In addition at some time the following Maraeroa blocks were alienated.[255]

A3B1	261a. 0r. 22p	Ellis & Burnand	CT 745/231
A3B2	1,981a. 0r. 29p	McLeod & Gardiner	CT 368/175
B3B1B	104a. 3r. 22p.	Ellis & Burnand	CT 399/172
B3B2A	124a. 2r. 00p.	Ellis & Burnand	CT 382/60
Cpt	17a. 2r. 32p.	Pt Pureora State Forest	W/7/63
C1 pt	11a. 0r. 14.8p.	Crown	CT 1053/290[256]

134. In 1963 and 1970 the following Consolidation Orders were made for Maraeroa C subdivisions:

DATE	BLOCK NO.	SIZE (A.R.P)	NO. OF OWNERS
20 Dec 1963	C1	982/0/34	30
	C2	766/0/10	25
	C3	2,398/3/23	111
	C4	2,667/1/22	103
	C5	6,912/0/31	286
20 Aug 1970	C	13,772/0/00	477[257]

135. Currently only the following Maraeroa blocks remain as Maori Land:

B2 pt	14a. 2r. 16.9p.
C	13,772A. 0. 0p.
C1 pt	971a. 0r. 19.2.[258]

136. None of those interests are held by the hapu.

Sharp Purchase Practices

137. The Crown land purchase negotiations and transactions for Ngāti Hari/Ngāti Urunumia lands included sharp and unfair practices.

Particulars

138. In the Rangitoto-Tuhua blocks in particular the Crown[259]:

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[254] Berghan #A60,, p. 510.
[255] Berghan notes that although the names of the subsequent landowners are recorded on file details associated with the alienation had not been located by her research.
[256] Berghan #A60, p. 510.
[257] Berghan #A60, p 510-511.
[258] Berghan #A60, p.511.
[259] Hearn #A70, pp.447-448.

(a) employed dated valuations;

(b) withheld information relating to valuations from Māori owners;

(c) restricted the owners' ability to deal with timber on the land; and

(d) in respect of the vested lands, deducted the cost of roading from purchase prices regardless of the fact that the only beneficiaries would be in-coming Pakeha settlers.

Public Works Takings

139. The claimants repeat, affirm and adopt the generic pleadings on Public Works Takings and the breaches set out therein. In addition the Claimants plead:

140. The Crown, in breach of the Treaty and its principles, unfairly and wrongfully adopted a policy of compulsory acquisition of lands in which Ngāti Hari/Ngāti Urunumia held an interest for various public works without adequate consultation with Ngāti Hari/Ngāti Urunumia, or adequate compensation, if any.

141. The Crown failed to ensure that all lands taken for public works were used for the purposes for which they were taken and to subsequently return the land to Maori when they were no longer used for the purpose for which it was taken.

Obligation to actively protect Maori-owned land

142. The Crown, in breach of the Treaty and its principles, in particular in breach of Article II of the Treaty, breached its obligation to avoid the taking of Maori-owned land.[260]

143. The Crown passed various Public Works and Native Land Acts, on which it relied to avoid its obligations to protect the interests of Ngāti Hari/Ngāti Urunumia.[261]

144. The Crown did not take into account that land was not a commodity for Maori.[262]

145. The Crown rarely considered alternative tenure options, that is, taking less than the freehold title (i.e leasehold interest or easement).[263]

146. The Crown considered only the need for the public work, and not the impact on the private landowner. Landlessness of Maori was never a

[260] David Alexander *Public Works And Other Takings, In Te Rohe Potae District*, Wai 898, #A063, p16.
[261] Ibid #A063, p.17. Other than the various Public Works Acts, the Scenery Preservation Act 1903.
[262] Ibid #A063, p.39.
[263] Ibid #A063, p.20.

relevant consideration under any Public works legislation. [264]

Discrimination against Maori-owned land – in breach of Article 3

147. The notification provisions in the Public Works legislation were deficient in respect of Maori-owned land. Personal notification was required only for registered owners of land and only where addresses were known. No requirement existed to notify the hapu. [265] A Notice of Intention to take was published in Kahiti and the New Zealand Gazette and posted at a local post office, all which was easily missed by owners. [266]

148. There was no impartial review process of objections to takings for Maori-owned land until 1973. [267]

149. There was no provision for negotiation for compensation for Maori-owned land, where compensation was payable for land taken. Until 1962 the Native Land Court (Maori Land Court) determined compensation. After 1962 the Maori Trustee negotiated compensation for Maori-owned land held by more than four owners. [268]

150. The amount of compensation (if any) could be offset against a perceived benefit under 'the betterment principle', that is that the owners would receive benefit from the public work for which the land was taken as the overall value of the land has increased. [269]

151. There was no requirement for the Crown to offer back to previous owners land it no longer required for a public work in the Public Works legislation until the 1981 Act. The offer back provision requires payment to the Crown for the land and any improvements[270], and assumes former owners were paid adequate compensation when the land was taken. Where the offer back provision was available it was

[264] Ibid #A063, p.77.
[265] Ibid #A063, pp. 35,36,
[266] Ibid #A063, p.34 and p76.
[267] Ibid #A063, p.19.
[268] Ibid #A063, pp.34,35, 78,79.
[269] Ibid #A063, p.20 and p.300.
[270] Ibid #A063, p.50.

not rigorously pursued. [271]

152. The Crown in some cases took more land that was required for the purpose. The land was often used for another public purpose without being first offered back to the original owners.

153. In Ngāti Hari/Ngāti Urunumia's rohe the Crown took land from the following land blocks where Ngāti Hari/Ngāti Urunumia hold customary interests by the following means:

Particulars

Takings for Quarries and Shingle Pits

154. The Crown, in breach of the Treaty and its principles, took land from Ngāti Hari/Ngāti Urunumia for the purpose of quarries and many such takings were made without payment of adequate compensation.

155. The Crown in taking ownership and control of the resource prevented Ngāti Hari/Ngāti Urunumia from the benefit of the ongoing income stream that this resource could have provided them.[272]

156. In Ngāti Hari/Ngāti Urunumia's rohe the Crown took land from the following land blocks where Ngāti Hari/Ngāti Urunumia hold customary interests by the following means:

Table – Taking for Quarries and Shingle Pits under various Public Works Legislation

Block	Area	Gazette or Plan Ref	Date	Compensation paid
Rangitoto-Tuhua 52A1	1-3-35	1921/190	02/12/1921	£40 [273]

Takings for Roads

157. The Crown, in breach of the Treaty and its principles, took land from Ngāti Hari/Ngāti Urunumia for the purpose of public roads without

[271] Ibid #A063, p.20.
[272] Ibid #A063, p.164.
[273] Unless otherwise stated all takings listed are from Wai 898 #A063a Public Works Takings Database. (5/10/1921, 63 Otorohanga 124) Compensation paid for this taking and for taking from neighbouring block Rangitoto – Tuhua 55B2.

consultation or payment of compensation.[274]

158. Under various Native Land Acts, up to five percent of any Maori land could be taken by the Crown for roading purposes without the payment of compensation.

159. In the Native Land 1865 Act the "five percent" provision applied to all land remaining in Maori ownership in the Native Land Court subject to Crown grant and (including customary land) and from 1882 the provision applied to all land issued a Native Land Court certificate of title or memorial of ownership.[275] This provision or successor provisions remained on statute until 1927.[276]

160. There was no requirement in the Act for the Crown to consult Maori owners as to where on the land the road would go or the need for that land to be taken and no compensation was payable.

161. Any legislative protection afforded Maori from taking for places where pa, wahi tapu and cultivations existed was inadequate as the Governor could still sign off on such takings and was treated as an administrative step rather than a substantive protection.[277]

162. Te Rohe Potae District was heavily affected by takings for roads under the "no consultation and no compensation" provisions of the Native land legislation during the nineteenth century and into the first two decades of the twentieth century.[278]

163. In Ngāti Hari/Ngāti Urunumia's rohe the Crown took land from the following land blocks where Ngāti Hari/Ngāti Urunumia hold customary interests by the following means:

[274] Ibid #A063, p.20. Section 76, Native Lands Act 1865.
[275] Ibid #A063, p.64.
[276] The provision was included in the Native Land Act 1873 (Section 106)19, the Native Land Court Act 1886 (Sections 93-95), the Native Land Court Act 1894 (Sections 70-71), and the Native Land Act 1909 (Sections 388-391) and not repealed until Section 30 Native Land Amendment and Native Land Claims Adjustment Act 1927.
[277] #A063, p.18.
[278] #A063, p.20.

Section 96 Native Land Court Act 1894 – laying off of Road under Surveyor-General's Warrants

Block	Area	Date of Warrant
Rangitoto Tuhua Block		January 1891.[279]

Section 70 Native Land Court Act 1894 and various Public Works Acts (Governor's Warrants issued 1900 -1910)

Block	Area	Gazette Ref	Date
Rangitoto-Tuhua 66		1907/1149 & 1912/198	07/11/1904
Maraetaua 7B	5-2-00	1909/689	16/03/1907
Maraetaua 10	6-2-32	1909/689-690	16/03/1907

S388, 389 Native Land Act 1909

Block	Area	Gazette Ref	Date
Rangitoto-Tuhua 52A	0-2-16.5	1918/3651	23/10/1918

Land taken for roads under Public Works Act 1928

Block	Area	Compensation paid	Gazette Ref	Date
Rangitoto-Tuhua 2C	0-3-19	None recorded	1962/878-879	08/06/1962
Rangitoto-Tuhua 66A3B	7-1-08.5	None recorded	1962/878-9	08/06/1962
Bed of Mangakahu Stream	0-0-18	None recorded	1962/878-9	08/06/1962
Rangitoto-Tuhua 74B6B	1-3-08	None recorded	1961/634-635[280]	08/05/1961
Rangitoto-Tuhua 74B3 Lot 1 DP 9349	0-0-24	None recorded	1967/1303-1304	07/08/1967

Roads taken without compensation under Section 240 Native Land Act 1909

164. The Crown took land from Rangitoto-Tuhua 74 block for roads under section 240 Native Land Act 1909.

165. The Block was made subject to Part I of the Native Land Settlement Act 1907 as land identified and recommended by the Stout-Ngata Commission to be developed for sale for European settlement.

[279] #A063, p145.
[280] Road realignment - associated consent to road stopping at 1961/639.

166. Section 240 of the Native Land Act 1909 provided that the relevant Maori Land Board could arrange that land into a suitable state for settlement, by subdividing and roading it, and made it possible for any of the roads so laid out to become public roads by Proclamation.

167. No compensation was paid by the Crown for the land that became public road, any compensation to Maori being deemed to be the improved value of the farm sections being made fit for sale. [281]

Block	Area	Date
Rangitoto-Tuhua 74B3 Lot 1	6-3-15	20/04/1918
Rangitoto-Tuhua 74B3 Lot 1A	5-00-2	20/04/1918
Rangitoto-Tuhua 74B4 & 74B5 Lot 2	2-0-34	20/04/1918
Rangitoto-Tuhua 74B5 Lot 3	6-0-39	20/04/1918
Rangitoto-Tuhua 74B5 Lot 4	8-1-25	20/04/1918
Rangitoto-Tuhua 74B5 Lot 5	8-0-20	20/04/1918

Roads taken under sections 49-52 Native Land Amendment Act 1913

Block	Area	Gazette Ref	Date
Rangitoto-Tuhua 2F1	2-2-36	1918/1762	06/05/1918
Rangitoto-Tuhua 7	3-0-19.5	1918/1762	06/05/1918
Rangitoto-Tuhua 74B6D	1-0-02	1918/1762	06/05/1918
Rangitoto-Tuhua 74B6G1	15-2-06	1918/1762	06/05/1918
Rangitoto-Tuhua 2C	3-0-24	1923/2565	06/10/1923
Rangitoto-Tuhua 2D2	11-3-32	1923/2565	06/10/1923
Rangitoto-Tuhua 2E	3-3-11	1923/2565	06/10/1923
Rangitoto-Tuhua 2F1B	1-2-08	1923/2565	06/10/1923
Rangitoto-Tuhua 2F2	0-1-06	1923/2565	06/10/1923
Rangitoto-Tuhua 2G	3-3-13	1923/2565	06/10/1923
Rangitoto-Tuhua 2H	5-2-00	1923/2565	06/10/1923
Rangitoto-Tuhua 67A2A1	0-0-17	1923/2565	06/10/1923
Rangitoto-Tuhua 67B1	2-3-00	1923/2565	06/10/1923

[281] #A063, p150.

Rangitoto-Tuhua 67B2	0-1-13	1923/2565	06/10/1923
Rangitoto-Tuhua 67B4A	0-2-35	1923/2565	06/10/1923
Rangitoto-Tuhua 67B4C	0-3-22	1923/2565	06/10/1923
Rangitoto-Tuhua 67C	0-0-17	1923/2565	06/10/1923
Rangitoto-Tuhua 7	0-2-37	1923/2565	06/10/1923
Rangitoto-Tuhua 74B1 Lot 2	0-1-00	1923/2565	06/10/1923
Rangitoto-Tuhua 8	2-1-19	1923/2565	1923/10/06
Rangitoto-Tuhua 21B2A2A	5-2-09	1924/2948	1924/12/12
Rangitoto-Tuhua 21B2A2B	7-1-06	1924/2948	1924/12/12
Rangitoto-Tuhua 66A	67-0-00	1924/1362	1924/05/31

Roads taken under sections 49-52 Native Land Amendment Act 1913 and section 14 Native Land Claims Adjustment Act 1927

Block	Area	Gazette Ref	Date
Rangitoto-Tuhua 66A2A	2-0-09	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 66A2C	0-2-30	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 66A3A	11-2-35	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 73B1	13-1-08	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 74B6B	8-0-03	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 74B6E	1-1-33	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 74B6E1B	4-2-28	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 74B6E2	0-2-23	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 74B6E4	11-3-17	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 74B6G2A	8-3-09	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 74B6G2B	5-2-01	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 74B6G2E	3-1-01	1930/3578-3579	14/11/1930
Rangitoto-Tuhua 74B6G2F	4-1-28	1930/3578-3579	14/11/1930

Land taken for roads under sections 487 Native Land Act 1931

Block	Area	Gazette Ref	Date
Rangitoto-Tuhua 2C	1-3-25	1935/1048	03/04/1935
Rangitoto-Tuhua 2D2	0-2-10	35/1048	03/04/1935

Rangitoto-Tuhua 67A2A1	0-3-21	35/1048	03/04/1935
Rangitoto-Tuhua 67A2A2	0-0-08	35/1048	03/04/1935
Rangitoto-Tuhua 67A3	13-3-16	35/1048	03/04/1935
Rangitoto-Tuhua 67B2	1-0-30	35/1048	03/04/1935
Rangitoto-Tuhua 67B4C	6-3-15	35/1048	03/04/1935
Rangitoto-Tuhua 67B4C1	5-0-11	35/1048	03/04/1935
Rangitoto-Tuhua 67B4C2	6-1-31	35/1048	03/04/1935
Rangitoto-Tuhua 67B1 Lot 1 DP 12782	0-3-34	1954/275	20/02/1952

Land taken for roads under Te Ture Whenua Maori Act 1993

Block	Area	Gazette Ref	Date
Rangitoto-Tuhua 52F	2.0860	2000/2676	11/08/2000

Local Government

168. The claimants repeat, affirm and adopt the generic pleadings on Local Government and the breaches set out therein. In addition the Claimants state that:

169. The Crown, in breach of the Treaty of Waitangi and its principles established local government throughout the colony and delegated authority to local government in breach of Ngāti Hari/Ngāti Urunumia tino rangatiratanga and without consultation with Ngāti Hari/Ngāti Urunumia.

170. The Crown enacted various local government statutes to effect the establishment and powers of local government.

171. The Crown, in breach of the Treaty of Waitangi and its principles and in particular Article I of the Treaty, failed to ensure that local authorities established a relationship with Ngāti Hari/Ngāti Urunumia that was consistent with the Treaty and its principles.[282]

172. The Crown, in breach of the Treaty of Waitangi and its principles and in particular Article I of the Treaty, failed to ensure Ngāti Hari/Ngāti Urunumia have had adequate representation and participation in decision-making in local government.[283]

173. The Crown, in breach of the Treaty of Waitangi and its principles and in particular Article I of the Treaty passed legislation the Local Electoral Act 2001 and the Local Government Act 2002 and delegated its responsibility to ensure Ngāti Hari/Ngāti Urunumia representation and participation in local government, to local government.

Particulars

(a) The Crown failed to ensure that local government, or such other bodies acting as agents of the Crown, worked with Ngāti Hari/Ngāti Urunumia to develop proper sewerage, roading, and

[282] Jane Luiten *Local Government in Te Rohe Potae*, Wai 898 #A24, p349.
[283] Luiten #A24, p,347 and p.350.

other infrastructure in Ngāti Hari/Ngāti Urunumia's rohe. [284]

(b) The Crown failed to ensure that local authorities, or other such bodies acting as agents of the Crown, protected water quality, wahi tapu and places of cultural importance in Ngāti Hari/Ngāti Urunumia's rohe.

(c) The Crown failed to ensure that the system of local government facilitate and served the interests of Ngāti Hari/Ngāti Urunumia as part of its wider constituency. [285]

174. The Crown enacted the Resource Management Act 1991 which does not provide for nor protect the rangātiratanga of, and Kaitiaki responsibilities of, Ngāti Hari/Ngāti Urunumia over their lands, forests, fisheries, waters, wahi tapu, waterways, and other taonga.

175. The Crown through its delegated authority to successive local government has allowed them to develop and carry out restrictive planning policies which have meant that Ngāti Hari/Ngāti Urunumia has been unable to develop land left in its control or hapu members' control. [286]

176. The Crown enacted part 3 of the Maori Purposes Act 1950 which removed the requirement that: [287]

(...) the Court had to be satisfied as to all of the conditions set out in the legislation ***(540/1931)****, that is, that the land was unleased and unoccupied and not kept properly cleared of noxious weeds and that the Court considered an alienation to be in the interests of the owners or of the public. (...)*

Section 34/1950 on the other hand required that only one ground be met before an order could be made appointing the Maori Trustee agent for the owners for the purpose of alienation. Either the land was unoccupied or not kept clear of noxious weeds or the beneficial owners could not be found. The grounds that owners had neglected to farm or manage the land diligently or had failed to pay rates which were charged against the land were innovations ensuring the success of almost every application.

177. Local Government authority could apply to the Maori Land Court for vesting orders under part 3 of the Maori Purposes Act 1950 and Part

[284] Luiten #A24, p.349.
[285] Luiten #A24, p.412.
[286] Luiten #A24, p.412., pp.24,25.
[287] Luiten #A24, pp,226, 227.

25 of the Maori Affairs Act 1953 (prior to that, section 540 Native Land Act 1931) in the Maori/Native Trustee, who could then alienate that land. [288]

178. Local Government members lobbied central government vigorously for the more expansive provision as a way of having Maori-owned land alienated so that it could in their view be productive and rateable.[289]

179. The Crown through the agency of the Maori Trustee allowed the Maori Land Court to take land under those orders and vest in the Maori trustee for alienation without proper consultation with owners.

Particulars

(a) The Crown through the agency of the Maori Trustee allowed the following applications by the Waitomo County Council and the Taumarunui County Council to have the Maori Trustee take over the management of the land: [290]

Block Name	Hearing Date/MB ref	No of Owners	Area	Ref	P	Grounds
Maraetaua 3B1B						
Evidence in Court/outcome Application for vesting order notified by clerk 23 Jan 1962.[291] Outcome unknown.						
Maraetaua 4B1	14/05/1953 Oto 78/149		42	1	24	Unpaid rates, neglect to farm, unoccupied
Evidence in Court/outcome No owners present. Order made.						
Maraetaua 7B	14/05/1953 Oto 78/149	54	56	0	00	Unoccupied
Evidence in Court/outcome No owners present. Order made						
Rangitoto Tuhua 55B2A2B3	16/8/1954 Oto 79/110					Neglect to farm
Evidence in Court/outcome Andrew: land was leased to orchardist, he has left. One owner wants to occupy cottage but she wishes protection. Land has gone back badly. Unoccupied except as to cottage.						

[288] Luiten #A24#A24, p,226.
[289] Luiten #A24#A24, p,219.
[290] Luiten #A24Luiten #A24, p. 461 and p. 474.
[291] O'Brien to registrar Maori Land Court, 23/01/1962 in 58/01/2 (doc:51)

A Ngatai (owner): Nothing at all is being done with the land because there are too many owners. I agree with Mr Andrews. Order made. A Ngatai desires lease.						
Rangitoto Tuhua 66A3B	24/11/1953 Oto 78/270	4	245	0	20	Neglect to farm
Evidence in Court/outcome Andrew: have not notified owners – have no addresses. Former lessee had slab whare and a little grass. No proper fences, gone back to fern & scrub. Adjoining owner would take lease. No rates paid. Adjourned for notice to be given to owners.						
Rangitoto Tuhua 67B4C1C2	17/08/1953 Oto 78/203	67	177	2	24	Unoccupied, neglect to farm, noxious weeds
Evidence in Court/outcome J. Ngarima a [t.b?] subject lives in shack on land but he is unable to farm and land not used. Order made.						
Rangitoto Tuhua 67B4C2	17/08/1953 Oto 78/203	41	273	0	31	Unoccupied neglect to farm
Evidence in Court/outcome Wholly unimproved. These two blocks should be leased together to form one holding. Order made.						

RATING

180. The claimants repeat, affirm and adopt the generic pleadings on Rating and the breaches set out therein. In addition the Claimants plead/state:

181. The Crown failed to acknowledge and give effect to the principles of the Ōhaki Tapu regarding the requirement that Rohe Pōtae lands would not be subject to rating.

182. The Crown, in breach of Ngāti Hari/Ngāti Urunumia tino rangatiratanga and without consultation with Ngāti Hari/Ngāti Urunumia empowered local government to impose a rating system on Ngāti Hari/Ngāti Urunumia land which caused an unfair burden upon Ngāti Hari/Ngāti Urunumia.

183. The Crown passed rating legislation which does not take account of Ngāti Hari/Ngāti Urunumia values in respect of their lands. These included:

The Crown and Native Lands Rating Act 1882 [292]: This Act provided that all Maori land in a borough and also within five miles of a public road was rateable ("the five-mile rule") and the rates if not paid by the owners were paid by the Colonial Treasurer and recouped by way of stamp duty when the affect land sold or leased;

The Rating Acts Amendment Act 1893 [293]: which, reinstated the five-mile rule and with exceptions, made Maori land rateable;

The Rating Act Amendment Act 1896 [294]: which introduced the ability for local government to nominate an owner where more than four owners and made provision for lease of the land subject to judgment to recoup the rates[295];

The Native Rating Act 1904 [296]: which made more Maori land liable to full rate liability;

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[292] Luiten #A24, p.37.
[293] Luiten #A24, p.38.
[294] Luiten #A24, p43.
[295] Luiten #A24, p.42.
[296] Luiten #A24, p.42.

The Rating Amendment Act 1910: which provided that all Maori freehold land was now liable to full and special rates on the same basis as general land.[297]

The Native Land Rating Act 1924/Rating Act 1925 provided that if a Court charging remained unpaid after one year the Court could order, subject to the consent of the Native Minister, that the land be vested in the Native Trustee for sale, to pay the charge. The Native Trustee could also mortgage the land to pay the rates.

The power of a receiver or the Native/Maori Trustee to sell Maori land for rates arrears was not removed until the passing of The Rating Powers Act 1988.

184. The Crown has imposed a rating system of Maori land that adopts a valuation[298] treating Maori land the same as general land. This is addressed in the Local Government Rates Inquiry (2007) recommendations with a message for more central government leadership on the matter and all matters regarding the rating of Maori freehold land. [299]

185. The Crown empowered local government through the Maori Land Court to recover rates arrears by the obtaining of charging orders on Ngāti Hari/Ngāti Urunumia lands to enforce the non-payment of local government rates.

186. Further the Crown empowered local government through the Maori Land Court to obtain orders for Ngāti Hari/Ngāti Urunumia land to be taken and vested in the Maori Trustee or his predecessor and alienated often without consultation with the registered owners.

Rates Remission

187. The Crown, in breach of the Treaty of Waitangi and its principles and in particular Article I of the Treaty passed Local Government (Rating) Act 2002 and delegated its responsibility to provide rates relief under

[297] Luiten #A24, p.44.
[298] Valuation New Zealand's application of the Ratings Valuation Act 1998
[299] http://www.dia.govt.nz/Pubforms.nsf/URL/RISummaryReport.pdf/$file/RISummaryReport.pdf

certain conditions [300] to local government providing for voluntary rates remissions policies.

188. Section 104 Rating Act 1925 provided that local government could apply for the exemption of land from rating.

Particulars

(a) Much of the land in the Ngāti Hari/Ngāti Urunumia rohe comes within the boundaries of what is now Ruapehu District Council. Its predecessor Taumarunui County Council, created in 1922, exempted more than 142,000 acres of Maori land from rates under this section and 41 Rangitoto-Tuhua blocks were included in this exemption.

(b) At the time there was virtually no Pakeha settlement in the area and no services to the land. [301]

(c) This exemption was revoked in 1955 when interest in farming and forestry grew and the possibility of income for rates payments increased.

189. Section 156 of the Rating Act 1967 provided local government with the ability to provide owners with rates remission on land that was undeveloped.

190. Section 102 of the Local Government Act 2001 requires all local government to have a policy on the remission and postponement of rates on Maori freehold land. However there is no requirement to actually adopt a policy that provides any such relief and no consistent approach by local government to this issue.

Particulars

(a) Taumarunui District Council and later Ruapehu District Council adopted this policy. Annual applications from owners were

[300] Luiten #A24 p.327.
[301] Luiten #A24 p.190.

required in order for relief to be granted. After 1980/81 when one council official retired the scheme lapsed.

(b) Ruapehu District Council currently has no rates remission or postponement policy in respect of Maori-owned land.

Deprival of Economic and Social Position

191. The claimants repeat, affirm and adopt the generic pleadings on Health and Economic Development Issues. The claimants also allege the following specific pleadings and particulars:

192. The Crown, in breach of the Treaty and its principles, has failed to provide adequate schooling, health services and employment initiatives for Ngāti Hari / Ngāti Urunumia to the detriment of the hapu's socio-economic position.

193. The Crown's failure to deliver such entitlements has forced many Ngāti Hari / Ngāti Urunumia people to move away from their ancestral lands.

Particulars

(a) Ngāti Hari / Ngāti Urunumia faced hardship after 1900 as they had lost much of their customary lands to the Crown.

(b) The Crown made little response to health problems among Ngāti Hari / Ngāti Urunumia. The Crown failed to construct and develop a social and economic infrastructure to mitigate the effects of rapid colonisation and social change.[302]

(c) The Crown's delivery of vital health services during the nineteen and early twentieth centuries was utterly inadequate.

(d) The Crown's delivery of educational services during the nineteenth and early twentieth century was largely non-existent.[303]

(e) An inadequate economic base ensured that it would always be difficult for Māori to recover from their poor economic position.[304]

194. The Crown, in breach of the Treaty and its principles, introduced the Native Land Court, which had immediate and long term socio-

[302] To be supported by Tangata Whenua evidence.
[303] To be supported by Tangata Whenua evidence.
[304] To be supported by Tangata Whenua evidence.

economic impacts on Ngāti Hari / Ngāti Urunumia.

Taonga Tuku Iho

Education and Te Reo

195. The claimants repeat, affirm and adopt the generic pleadings on Education and Te Reo. The claimants also allege the following specific pleadings and particulars:

196. The Crown through various educational policies has failed in their duty of good faith to actively protect Te Reo Māori, and the tikanga, kawa, ritenga, waiata, whakapapa and other taonga which are the collective manifestation of the unique identity of Ngāti Hari / Ngāti Urunumia as a hapu with claims in Te Rohe Potae Inquiry.

Particulars

(a) Fluent use and knowledge of the Māori language is considered fundamentally essential to the preservation and vitality of Māori cultural knowledge systems because the language underpins the culture and helps to define it.[305]

(b) Māori language itself provides insights into aspects of Māori culture that are unique to the tangata whenua of each whenua. Māori language is the only appropriate means of transmitting Māori cultural knowledge.[306]

(c) Today, small numbers of Ngāti Hari / Ngāti Urunumia individuals are fluent in Te Reo Māori.

197. The Crown pursued assimilationist policies in education resulting in the near extinction of Ngāti Hari / Ngāti Urunumia language and culture specifically through the assimilation of Māori children into European culture and Society. The Crown prohibited the use of Māori language in schools thereby derogating the right of Ngāti Hari / Ngāti Urunumia to maintain and develop their language, culture and customs in breach of the Articles and principles of the Treaty of Waitangi.

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[305] David Williams, Crown Policy Affecting Māori Knowledge Systems and Cultural Practices, Waitangi Tribunal Publication, 2001, p 124.
[306] Ibid.

Particulars

(a) In 1871 the Crown enacted the Native Schools Amendment Act that education would be provided in the English language only.

(b) From 1894 schooling for Māori children became a matter of legal compulsion as a result of the School Attendance Act.[307]

(c) Māori language and culture were consistently excluded from the curriculum, to the severe detriment of Māori. Instead the curriculum was – and arguably still is – steeped in an ideology that is alien to Māori. It meant that what was learnt at home and in the community was unacceptable or misinterpreted at school and this ultimately mitigated against the success of Māori children.

(d) The Inspector-General of Schools reported that English was second only in importance to the work of making Māori acquainted with European customs and ways of thinking.[308]

198. The Crown manipulated educational ideology and processes in order to amalgamate the people of Ngāti Hari / Ngāti Urunumia. It achieved this through the creation and implementation of curricula which was to be in English and taught only the ordinary subjects of English Primary Education. It also utilised processes including scaling systems of marking that impeded Māori academic achievement, diminished the importance of te reo Māori and imposed European ideologies and culture.

Particulars

(a) The direct method of teaching English was preferred based on their assumption that a second language would be learnt more effectively if the first language was not spoken at all.

> *"Do not speak to your pupils in Māori, and do not permit them to speak in Māori to you, or to one another if you can help it. The less they hear of Māori the better it will be for their English. Do not, however well you may speak the language, give orders in Māori or attempt explanations."* [309]

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[307] Williams, p 121.
[308] Williams, p 129.
[309] Education Department, The Teaching of English in Native Schools: The Direct, or Natural Method, Wellington Government Printer, 1917 p 6 in Williams, p 130.

(b) Māori children were absolutely forbidden from speaking Māori on school grounds and were regularly punished for doing so.[310]

199. The Crown knew or ought to have been aware of the disparity of Māori education yet failed to take any steps to rectify the 'gap' it had created and actively encouraged.

Particulars

(a) The school system emphasized the values of individuality, competition, self-discipline, restraint, striving for different goals and abstract expression. While within the home and community the children of Ngāti Hari / Ngāti Urunumia were socialized with different Ngāti Hari / Ngāti Urunumia tribal values. These Tribal values must also be seen within the context of the whole Māori value system and experience,

"...not only were Native Schools a necessary pioneer of civilisation, [but they also] had the effect of breaking down the prejudices of the Māoris [sic] *to the pakeha and his ways."*[311]

(b) The Crown adopted a policy for schools which actively encouraged Māori students to undertake non-academic study which exacerbated existing disparities.[312]

200. The Crown took the process of education out of the hands of Māori and its elders. Schooling was ultimately a means by which the tino rangatiratanga of Māori was undermined. The Māori world view, language and culture were displaced by the economic and social world view of the new order.

Particulars

(a) Fluent use and knowledge of the Māori language is considered fundamentally essential to the preservation and vitality of Māori cultural knowledge systems because the language underpins the culture and helps to define it.[313]

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[310] Williams, p 130.
[311] Bird and Porteous to Inspector General 31 March 1911 in Williams, p 131.
[312] Ranginui Walker, *Ka Whawhai Tonu Matou. Struggle Without End*, Auckland, 1990, pp 242-243.
[313] Williams, p 124.

(b) From 1894 schooling for Māori children became a matter of legal compulsion as a result of the School Attendance Act.[314]

201. The Crown, in breach of its duties, failed to provide Ngāti Hari / Ngāti Urunumia with the same access to education as British Citizens.

Particulars

(a) Ngāti Hari / Ngāti Urunumia were eager to take advantage of educational opportunities provided by the Crown.

(b) The Crown did not provide Ngāti Hari / Ngāti Urunumia with the same rights and privileges of education as British citizens in education. It:

(i) Did not provide adequate assistance for Ngāti Hari / Ngāti Urunumia education;

(ii) Did not ensure that schools were placed on sites suitable for Ngāti Hari / Ngāti Urunumia and that they catered for Māori interests;

(iii) Failed to ensure that Māori did not face cultural and language barriers at school;

(iv) Did not provide adequate higher education for Māori children;

(v) Did not provide and attract teachers to isolated settlements; and

(vi) Did not provide adequate health, housing, food supplies, land resources and economic opportunities to ensure ongoing education.

[314] Williams , p 121.

Custom and Culture

202. The claimants repeat, affirm and adopt the generic pleadings on Custom and Culture. The claimants also allege the following specific pleadings and particulars:

203. The Crown has breached the Treaty and its principles, and in particular, Article 2 of the Treaty and the Crown's promise of "royal protection" under Article 3, in that it failed to preserve Māori custom and to ensure Māori retain full exclusive and undisturbed possession of their taonga and failed to protect and provide for the practice of their religion and tikanga.

Particulars

(a) The Crown enacted the Tohunga Suppression Act 1907 to eradicate Māori religious practice. The Act denied Ngāti Hari / Ngāti Urunumia tohunga the right to practice traditional Maori medicine and wairuatanga.

(b) Under the Act penalties were imposed on tohunga (experts in Maori medicine and Maori spirituality) that resulted in the oppression and suppression of mātauranga Maori and any or all attempts by Ngāti Hari / Ngāti Urunumia and all tangata whenua to keep control of their own wellbeing.

(c) The Crown suppressed Māori custom in relation to the ownership of land.

(d) The Crown sought to destroy or undermine Māori autonomy.

(e) In the context of the Crown's disruption of Māori custom, Ngāti Hari / Ngāti Urunumia have been unable to fulfil their obligations of kaitiakitanga.

Resource Management and Environmental Issues

204. The claimants repeat, affirm and adopt the generic pleadings on Environmental Issues. The claimants also allege the following specific pleadings and particulars:

205. The Crown failed to properly protect against the depletion and pollution of the lands, seas, harbours, lakes, waters, waterways (including groundwaters), environments, and resources of Ngāti Hari / Ngāti Urunumia.

206. The Crown failed to properly provide for and recognize the intellectual and property rights to flora and fauna, foods, rongoa, and other taonga within the lands and waters possessed and enjoyed by Ngāti Hari / Ngāti Urunumia.

207. The Crown failed to properly recognize and provide for the customary title and rights of Ngāti Hari / Ngāti Urunumia to their seas, harbours, rivers, lakes, and waterways (including their waters, groundwaters, and associated resources).

208. In particular, the Crown failed to properly recognize and provide for the customary title and rights of Ngāti Hari / Ngāti Urunumia to their rivers and waterways (including their waters, groundwaters, and associated resources) in waterways.

209. The Crown further failed to protect the physical and spiritual health of these seas, harbours, lakes, rivers, waters and waterways of Ngāti Hari / Ngāti Urunumia.

210. The Crown has failed to recognise, protect, and provide for the customary rights, interests and associations of Ngāti Hari / Ngāti Urunumia in their seas, harbours, lakes, rivers, and waters by enacting various legislation including the Resource Management Act 1991 and the Foreshore and Seabed Act 2004.

211. The Crown has also failed to recognise, protect, and provide for the customary rights, interests, and associations of Ngāti Hari / Ngāti Urunumia by applying the ad medium filum aquae common law rule

and/or by failing to remedy any prejudice caused by the application of that common law rule.

212. The Crown has failed to properly recognise, protect, and provide for the ownership of Ngāti Hari / Ngāti Urunumia in water.

213. The Crown has failed to properly recognise, protect, and provide for the ownership by Ngāti Hari / Ngāti Urunumia of the other resources of the seas, harbours, rivers, waters, lakes, waterways, and groundwaters.

214. The Crown has failed to protect the interests of Ngāti Hari / Ngāti Urunumia by the compulsory taking of land on the banks and in the vicinity of the lakes, harbours, beaches, rivers, and waterways for reserves and other 'public purposes'.

215. The Crown has failed to adequately recognise and protect the wahi tapu of Ngāti Hari / Ngāti Urunumia in and around the harbours, rivers, lakes, waterways, and other Ngāti Hari / Ngāti Urunumia taonga.

216. The Crown has, through its Land Confiscation Acts, caused and permitted the total loss of communal tribal titles to the lands of Ngāti Hari / Ngāti Urunumia including the seabeds, harbour-beds, and river beds.

217. The Crown has, through its various Native Lands Acts, caused and permitted the fragmentation and individualisation of communal tribal titles to the lands of Ngāti Hari / Ngāti Urunumia.

218. The Crown has through various statutes, policies, practices, and other instrumentalities, including in particular the Resource Management Act 1991 expropriated te tino rangatiratanga and management rights over the rivers, lakes, harbours, seas, waterways, and waters from Ngāti Hari / Ngāti Urunumia without their consent and, in so doing, has failed to adequately provide for or recognise their role as kaitiaki over these taonga.

219. The Crown has failed to adequately recognise, respect, provide, and protect the right of Ngāti Hari / Ngāti Urunumia regarding further

degradation and contamination of the waters of their rivers, lakes, harbours, seas and other waterways.

220. The Crown usurped Ngāti Hari / Ngāti Urunumia te tino rangatiratanga over their lands, forests, fisheries, rivers, waters, waterways and other taonga within their customary lands and has failed to adequately provide for or recognize their role as kaitiaki over such rivers and waterways.

221. The Crown failed to adequately protect and provide for the exercise by Ngāti Hari / Ngāti Urunumia of non-commercial customary fishing and the customary fisheries in their rivers and waterways.

222. The Crown failed to protect the traditional food gathering areas that were dotted throughout the ancestral lands of Ngāti Hari / Ngāti Urunumia.

Particulars

(a) The Crown failed to protect the wahi tapu of Ngāti Hari / Ngāti Urunumia.

Crown failure to "suitably" manage exotic species and pests

223. The claimants repeat, affirm and adopt the generic pleadings on the Crown's management of exotic species and pests **(if any)**. The claimants also allege the following specific pleadings and particulars:

224. The Crown, in breach of the Treaty of Waitangi and its principles, managed pest control in a culturally insensitive manner and failed to 'suitably' protect and manage Ngāti Hari / Ngāti Urunumia native forests, fisheries, flora and fauna from the damaging ecological effects of exotic species.

Particulars

(a) The Crown has failed to implement culturally appropriate, immediate and effective methods of pest control in the lands of Ngāti Hari / Ngāti Urunumia.

(b) The Crown has allowed or introduced exotic species into the lands of Ngāti Hari / Ngāti Urunumia especially deer and opossums, which have been managed inadequately by the Crown and caused the following effects:

(i) Reduction of bio-diversity;

(ii) Severe damage to the Native forest under-story. Deer impair the regeneration of many hardwood species. Deer kill many species through antler rubbing and bark-chewing, especially podocarps, horopito, rewarewa, and young beech trees;

(iii) Die-back of certain species targeted by opossums;

(iv) Negative impacts on Native avifauna, including kiwi, fantail, and kokako;

(v) Accelerated erosion and flooding. Deer destroy the protective covering of the forest floor. Deer and opossums deplete the forest of its absorptive qualities; and

(vi) The use of 1080 poison which is culturally inappropriate to Ngāti Hari / Ngāti Urunumia and may cause secondary poisoning to dogs and other animals.

225. The use of 1080 by the Department of Conservation within the lands of Ngāti Hari / Ngāti Urunumia has been conducted without adequate consultation with tangata whenua.

PART C - THE PREJUDICE

226. As a consequence of the Crown's breaches as set out in this Amended Statement of Claim, Ngāti Hari/Ngāti Urunumia has suffered and continues to suffer various prejudicial effects including:

(a) The rapid alienation of almost all of their land base leaving the tribe virtually landless within Te Rohe Potae Inquiry District and Central North Island Inquiry District;

(b) The loss of mana and rangātiratanga and a consequential loss of economic, cultural and political autonomy;

(c) The loss of or damage to the complex customary systems of land tenure and resource rights;

(d) The marginalisation of Ngāti Hari/Ngāti Urunumia within their own ancestral lands;

(e) The loss of Ngāti Hari/Ngāti Urunumia life and property;

(f) The disintegration and decay of Ngāti Hari/Ngāti Urunumia chiefly and tribal authority;

(g) The damage and desecration of tribal wāhi tapu and taonga;

(h) The loss of customary fisheries and waterways, and access to customary knowledge of such fisheries and waterways;

(i) The loss of knowledge of, or vastly reduced practice of, customary religious practices and tikanga;

(j) The reduction of the use of te Reo Māori as a first language and the knowledge of tribal dialects; and,

(k) The impairment of, or damage to, the spirit, wairua, mana, and ihi of the hapū and its members.

PART D - THE RELIEF

Remedies Sought

227. That the prejudice as aforesaid was and remains such that Ngāti Hari/Ngāti Urunumia are entitled to immediate and substantial reparations such as to restore the mana and economic base of the Ngāti Hari/Ngāti Urunumia people.

228. The Claimants therefore request the Waitangi Tribunal to seek to help remove and diminish the prejudice suffered by making findings that the Crown has breached the principles of the Treaty of Waitangi as set out in this Amended Statement of Claim and recommendations seeking:

(a) The full restoration of the mana of Ngāti Hari/Ngāti Urunumia over their customary tribal lands and the recognition of Ngāti Hari/Ngāti Urunumia customary associations and interests with their lands;

(b) The return to Ngāti Hari/Ngāti Urunumia of all Crown lands including Department of Conservation and Conservation Stewardship lands within their customary tribal lands;

(c) Pursuant to sections 8A to 8HJ of the Treaty of Waitangi Act 1975 the return to Ngāti Hari/Ngāti Urunumia of all State-owned Enterprise lands within their customary tribal territory, including any former State-enterprise land, subject to Section 27B of the State Owned Enterprises Act 1986;

(d) Pursuant to sections 8A to 8HJ of the Treaty of Waitangi Act 1975 the return to Ngāti Hari/Ngāti Urunumia of all lands held by institutions under the Education Act 1989 within their customary tribal territory, including any such land no longer held by institutions but subject to Section 27B of the State Owned Enterprises Act 1986;

(e) Pursuant to sections 8A to 8HJ of the Treaty of Waitangi Act 1975 the return to Ngāti Hari/Ngāti Urunumia of all lands vested

under the New Zealand Railway Incorporation Restructuring Act 1989 within their customary tribal territory, or any interest in such land together with any improvements thereon;

(f) The return to Ngāti Hari/Ngāti Urunumia of all Crown Forest assets within the region of the Ngāti Hari/Ngāti Urunumia claims (so that there can be a payment to Ngāti Hari/Ngāti Urunumia of undispersed rentals held by the Crown Forestry Rental Trust pursuant to their Trust Deed); and the payment to Ngāti Hari/Ngāti Urunumia of the maximum level of compensation payable by virtue of the provisions of the First Schedule of the Crown Forest Assets Act 1989;

(g) The immediate recognition of Ngāti Hari/Ngāti Urunumia ownership of all rivers, lakes, waterways, minerals, waters and ground-waters, and other resources currently claimed by the Crown within the Ngāti Hari/Ngāti Urunumia rohe;

(h) An immediate apology by, and on behalf of, the Crown and its agents;

(i) Full and comprehensive monetary reparation;

(j) Costs; and,

(k) Such other relief as the Tribunal deems appropriate.

229. The claimants seek leave to amend this Statement of Claim in light of further research, evidence and submissions.

DATED at Auckland this 9th day of December 2011

Te Kani T R Williams / Bernadette Arapere / Robyn Gray
Counsel for Ngati Hari/Ngāti Urunumia

This Amended Statement of Claim is filed by **TE KANI TE AURIPO REWITA WILLIAMS** Solicitor for the Claimants whose address for service is at the offices of Wackrow Williams & Davies Limited, Barristers and Solicitors, Level 14, 48 Emily Place, Auckland 1.

Documents for service on the abovenamed Claimants may be left at that address for service or may be

a) Posted to the solicitor at PO Box 461, Auckland 1140; or
b) Left for the solicitor at a Document Exchange for direction to DX CP20503; or
c) Transmitted to the solicitor by facsimile to (09) 377-6553