OFFICIAL

IN THE WAITANGI TRIBUNAL

WAI 1059
WAI 50

IN THE MATTER	of the Treaty of Waitangi Act 1975
AND	
IN THE MATTER	of a claim by GREG KEENAN, MARIE STEWART and LESLIE HOWE on behalf of themselves and all members of the Te Kotahitanga Incorporated Society and nga hapu katoa o Te Rohe Potae (**Wai 1059**)
AND	
IN THE MATTER OF	of a claim by PAORA ROPATA on behalf of himself, all members of the Te Kotahitanga Incorporated Society and nga hapu katoa o Te Rohe Potae (**Wai 50**)

AMENDED STATEMENT OF CLAIM

DATED this 9th day of December 2011

RECEIVED
Waitangi Tribunal
9 Dec 2012
Ministry of Justice
WELLINGTON

McCaw Lewis Limited, Solicitors
A H C WARREN – DIRECTOR
P O Box 9348
DX GP 20020
HAMILTON
PH – (07) 838 2079
FAX – (07) 839 4652

O'Sheas Barristers & Solicitors
HMR PUTARANUI – SOLICITOR
P O Box 460
DX GX10052
HAMILTON
PH – (07) 838 3109
FAX – (07) 838 3494

"Our ancestors were humble, non offensive people who had a great love and faith for Io Matua...Their descendants maintain that faith to this day as can be seen by the Ringatu, Ratana, the Parihaka, the Kotahitanga, the Paimarire and the Mana Ariki movements."[1]

[1] Claimant evidence

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MAY IT PLEASE THE TRIBUNAL:

A. **NGA KAITONO – THE CLAIMANTS**

1. The Wai 1059 claim was originally filed on 7 January 2002 by **Greg Keenan, Marie Stewart and Leslie Howe,** for and behalf of themselves and all members of the Te Kotahitanga Incorporated Society and nga hapu katoa o Te Rohe Potae, Wai 1059.

2. The Wai 50 claim was originally filed on 11 November 1988 by **Paora Ropata,** for and on behalf of himself, all members of the Te Kotahitanga Incorporated Society and nga hapu katoa o Te Rohe Potae, Wai 50.

3. All of the claimants are members of the Te Kotahitanga Incorporated Society ("the Incorporation").

   3.1 All claimants trace their descent to Io, Ranginui, Papatuanuku, Taane, Tama Nui te Raa, Rona, Nga Whetu, Whatukura, Mareikura, Ronogorongo me nga whetu.[2]

4. In the spirit of kotahitanga and whanaungatanga and for the sake of efficiency the claimants wish to record their common and respective pleadings together as set out in this Amended Statement of Claim.

5. The claimants have also participated in and contributed to a series of Waitangi Tribunal hearings whereby they gave evidence on their oral and traditional history, also known as 'Nga korero tuku iho o Te Rohe Potae'.[3]

B. **Nga Take – The claims**

6. Up to and as at 1840, the claimants and their tupuna have lived by and in accordance with their own Kotahitanga spiritual and philosophical beliefs.[4]

7. Around 1975, the last Maori Prophet Mr Alexander Phillips established Mana Ariki near Taumarunui, a spiritual centre which has helped to serve the increasing demands of the Kotahitanga.

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[2] Claimant evidence.
[3] Hui held on 9 – 11 June 2010 at Te Tokanganui-a-noho Marae, Te Kuiti
[4] Claimant evidence

8. The claimants believe in Mana Ariki or the sovereignty of the Lord as expressed – "i raro i Te Mana o Te Matua, Te Whaea, Te Tama, Te Wairua Tapu me Nga Anahere Whakapono". The Incorporation has always had a strong allegiance to the Kingitanga.[5]

9. Within the context of this Inquiry their historical account of the Maori migration through to this day is based on spiritual and philosophical beliefs held sacred by the descendants. They understand their historical record may generate controversy and discussion.

10. However, the claimants are a people of strong spiritual convictions which have largely survived the passage of time. Their descendants maintain the faith that to this day can be seen in the Ringatu, the Ratana, the Parihaka, the Kotahitanga, the Paimarire, and Mana Ariki movements. All of which are central to a collective Maori history and retention of the Maori culture.

11. While the philosophy of their spiritual convictions continues to be preserved, since signing Te Tiriti o Waitangi the Crown has adopted a series of policies and practices that have sought to undermine the rangatiratanga, tikanga and ability of the claimants to live by their own cultural and religious preferences.

12. This Amended Statement of Claim identifies historical breaches of Te Tiriti o Waitangi (Treaty of Waitangi) by the Crown which have caused and continue to cause prejudice to the claimants.

13. The claimants say the Crown's Acts, regulations, orders, polices, practices, actions and omissions in respect of their rangatiratanga, whenua, awa, taonga, tikanga and other resources referred to are and remain in breach of Te Tiriti o Waitangi ("Crown breaches of Te Tiriti").

14. In particular this claim relates to:

    14.1 the marginalisation of the claimants rangatiratanga and suppression of their mana motuhake Maori and taonga including tikanga and their religious preferences;

[5] Claimant evidence

14.2 Crown land dealings particularly in relation to the surveying of Maori lands, the operation of the Native Land Court and subsequent loss of lands; and

14.3 Cultural, social and economic loss.

C. **Takiwa – The Claim Area**

15. The claimants have interests throughout the Inquiry District including the Awakino, Mokai, Taumatamaire, Rauroa, Harihari and particularly the Rangitoto Tuhua 55A block, located approximately 10 kilometres north of Taumarunui.

16. Below is a map which shows some of the claimants' block interests within the Inquiry District:

D. **FIRST CAUSE OF ACTION – RANGATIRATANGA – MANA MOTUHAKE MAORI**

DUTIES:

17. The Crown has a duty under Article 2 of Te Tiriti o Waitangi to actively protect the rangatiratanga (mana/sovereignty) of Maori over their lands, forests, fisheries, taonga and people.

BREACH:

18. The fundamental breach, from which all other breaches emanate was the usurpation by the Crown of the Maori rangatiratanga guaranteed pursuant to Article 2 of Te Tiriti.

19. By various acts, omissions, policies and practices since 1840 the Crown has:

19.1 failed to actively protect Maori rangatiratanga and act reasonably and with utmost good faith towards Maori;

19.2 wrongfully appropriated to itself a supreme law making power and then has progressively used that power to diminish Maori land, forests, fisheries, taonga and people;

19.3 consistently and progressively diminished the position of Maori while enhancing the position of the Crown and the settlers arriving in New Zealand;

19.4 actively pursued assimilationist legislation and policies that have resulted in the diminishment of the claimants tikanga, matauranga Maori, taonga and beliefs; and

19.5 failed to act to mitigate or redress the prejudice arising to Maori as a result of clear and consistent breaches of Te Tiriti – the Treaty.

PARTICULARS:

20. Prior to Te Tiriti o Waitangi the claimants tupuna lived and exercised full rangatiratanga and kaitiakitanga over their lands, resources and affairs in accordance with their own tikanga and philosophical beliefs.

21. In 1840 Te Rohe Potae rangatira signed and Te Tiriti in good faith seeking and upholding a relationship of utmost good faith with the English sovereign. A rangatira to rangatira relationship, the Queen and Maori side by side, God above.

22. The claimants say that in accordance with this relationship and under the terms of Tiriti o Waitangi the Crown had an absolute duty to actively protect the rangatiratanga, mana motuhake, tikanga, matauranga maori and taonga tuku iho, in this context consciousness of their religious and

philosophical beliefs. The Crown has an obligation to protect their distinctive existence.

23. The claimants say the Crown has not honored the words or the spirit of Te Tiriti. Wrongfully and in fundamental breach of Article 2 of Te Tiriti o Waitangi the Crown has assumed unto itself a supreme law making authority even over the terms of Te Tiriti itself.

24. In particular the Crown has failed to recognise and respect their rangatiratanga, mana motuhake Maori and the importance the metaphysical process of natural order upon which Maoritanga is based.

Tikanga / Matauranga Maori

25. Tikanga, kawa and matauranga Maori specific to the claimants are essential in allowing them to exercise rangatiratanga over their whenua, taonga, resources and affairs. Their beliefs and matauranga are also taonga and essential in ensuring that their specific traditional knowledge is preserved and protected. Tikanga and matauranga maori are taonga tuku iho required for the present and future needs of the claimants.

26. The lore of hapu was tikanga which governed human conditions, endeavours and conduct, including *inter alia*, mana (status and other qualities), whakapapa (genealogy and histories), tapu (sacredness and prohibition), rahui (restriction and protection), whenua tuku iho (succession to ancestral lands), tuku (relationship development and gifting) and utu (enforceable reciprocation).

27. These conditions in terms of tikanga Maori were an essential part of the claimants normative system or philosophy of conduct and principles practiced by their respective community.

28. The day to day practices and interpretation of tikanga were essential to the claimants in that it allowed them to exercise rangatiratanga and kaitiakitanga over their whenua and affairs. Kaitiakitanga was not only in the environmental conservation sense it was also in the sense of a person who or group which is recognised as a guardian and protector of any taonga by the tangata

29. The Crown actively pursued policies that interfered with the tikanga of the claimants in that it:

29.1 Enacted amongst other things:

a) The Maori Councils Act 1900;

b) The Tohunga Suppression Act 1907;

c) The Maori Purposes Acts (various years);

d) The Historic Places Act 1975; and

e) The Native Lands Acts.

29.2 Te Rohe Potae Claimants derive their mana and their tino rangatiratanga from their ancestry and from their lands, waters and other taonga. The Crown failed to take necessary steps to provide sufficient protections to ensure that Nga Hapu o Te Rohe Potae retained land of sufficient quantity and quality for their present and future needs (see in particular Second Cause of Action – Surveys);

29.3 The Crown imposed the Native Land Court system on Nga Hapu o Te Rohe Potae which subverted iwi and hapu systems of land tenure;

29.4 The Crown failed to ensure the ongoing recognition of traditional Maori leadership and hapu.

Tohunga suppression Act 1907

30. The claimants say their tupuana were recognized experts in spiritual, philosophical, metaphysical, astronomical and meteorological knowledge. The claimants say their tohunga played a key role in keeping and restoring order according to the principles of tikanga (they were kaitiaki exercising kaitiakitanga).

31. They claimants say they have been particularly affected by the Tohunga Supression Act 1907 in that under the Act the Crown:

31.1 prohibited mahi tohunga and in doing so, they failed to actively protect their rangatiratanga, tikanga, kaitiakitanga, and taonga;

31.2 advanced culturally assimilationist policies aimed at neutralising the Maori political power base; and

31.3 favoured the streamlining European models of healthcare among Maoridom (as long as this suited the Crown's approach).

32. In this sense the Crown disrupted the actions of those tohunga which upheld the tikanga of Nga Hapu o Te Rohe Potae, including kaitiakitanga (kaitiaki in the sense of a person who or group which is recognised as a guardian and protector of any taonga by the tangata)

Taonga

33. Taonga in this context refers to a range of cultural elements bequeathed by forebears to the claimants / descendants as legacy or birth right namely;

33.1 Nga taonga a nga tupuna-ancestral treasures;

33.2 Taonga tuku iho-treasures bequeathed; and

33.3 Ohaki a nga tupuna-maxims of the ancestors;

34. These taonga underpinned the cultural traditions, lore, history, corpus of knowledge with which whanau and the hapu could seek, discern and affirm their respective identity of place.

35. The process of assimilation and land alienation as carried out by the Crown and imposed upon the claimants displaced them of much of their taonga resulting in the cultural erosion of the essential metaphysics by which they were guided namely beyond the physics sphere and into ultimate reality (wairua) and natural order including:

36. The result was that the claimants had become disaffected from the fundamental convictions and succeeding generations of the dissemination of their knowledge and protection of their cultural heritage.

37. Of significant importance are tangible and intangible taonga in particular Ohaki a nga tupuna 'maxims of the ancestors' lore history, the corpus of

traditional knowledge and natural order. These have suffered because the tikanga, matauranga maori and Te Reo Maori, all vital element for the retention of these taonga have diminished.

38. The claimants say the Crown has failed to uphold their responsibility to protect, including their kaitiakitanga of their taonga resulting in the degradation of the claimants' taonga namely;

38.1 Lands, forestry, wetlands, the foreshore and the seabed;

38.2 Water; the rivers, the lakes, artesian water, the waterfalls, the saltwater over the foreshore and seabed;

38.3 Air and its purity;

38.4 Matauranga, of whakapapa, of kawa, of tikanga;

38.5 Material taonga, mere pounamu and other artifacts;

38.6 Human spirit, dignity and health;

38.7 Tupapaku, human remains, burial rites; and

38.8 Wahi tapu places of sacredness.

PREJUDICE:

39. The implementation of the above legislation and Crown policies and practices resulted in the following consequences for the claimants:

39.1 A loss of rangatiratanga and mana motuhake Maori;

39.2 Suppression and loss of tikanga Maori, values, beliefs, Te Reo Maori and cultural identity;

39.3 A loss of political control and participation in decision making which affects Maori in Te Rohe Potae;

39.4 A loss of political and economic independence;

39.5 Compromise of retention and development of te reo Maori, matauranga Maori, culture and tikanga;

39.6 Undermining of tikanga through the individualisation of land title rather than recognising traditional communal land tenure;

39.7 Imposition and restrictions upon the access to and guardianship of te reo Maori for understanding and transmitting traditional knowledge.

E. SECOND CAUSE OF ACTION: SURVEYING

DUTIES:

40. At all times the Crown has duties under Te Tiriti o Waitangi to:

40.1 actively protect Māori land and resources to the fullest extent practicable;

40.2 act reasonably and with the utmost good faith in all dealings with Māori; and

40.3 adopt a fair processes in any dealings with Māori and their lands.

BREACH:

41. In breach of its duties under Te Tiriti o Waitangi the Crown carried out land surveying practices which imposed upon Māori significant and unreasonable costs through survey requirements, which led to the loss of lands.

PARTICULARS:

42. The Crown's surveying of Maori land is a particular issue for the claimants.

43. Through various Acts, policies and practices the Native Land Court was empowered to impose more than £22,000 of survey charging orders on subdivisions of the Rohe Potae block and acquire large amounts of lands between 1892 and the end of 1907.[6]

44. The Crown's surveying policy and practice failed to protect Maori rangatiratanga and interests in land in that:

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[6] Wai 898 # A79 Husbands and Mitchell, *The Native Land Court, land titles and Crown land purchasing in the Rohe Potae district, 1866 - 1907*, p 517

44.1 Surveyors could take out charging orders over land for work completed;[7]

44.2 Māori owners could then request that the Crown pay these costs, of which could then be secured by way of a mortgage over the Māori landowners' land. The mortgage incurred a five percent interest rate;

44.3 Charging orders could be made in favour of the Surveyor General;[8]

44.4 The Crown could take land to recover survey costs;[9]

44.5 By 1895 the onselling of land taken by the Crown to recover survey liens or mortgages had to be approved by an Order in Council. If no approval was given the Crown could take over the lien;

44.6 Māori land was sold to recoup survey costs.[10] Survey costs:

a) Led directly to the alienation of land through the imposition of court imposed survey liens;[11]and

b) Were often not a one-off and successive rounds of partitioning of a block into smaller and smaller parcels compounded the burden;[12]

44.7 As well as being charged to those initiating title investigation or subdivision, survey costs were imposed on other owners, including non-sellers when the Crown enforced partition of the shares it had acquired in a block;[13]

44.8 If unpaid, survey costs accrued interest at a rate which was usually 5 percent per annum for five years.[14]

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[7] Wai 898 # A67 Boulton, *Land Alienation 1884-1908*, p 388
[8] Wai 898 # A67 Boulton, p 388
[9] Wai 898 # A67 Boulton, p 388
[10] Wai 898 # A67 Boulton, p 389
[11] Wai 898 # A79 Husbands and Mitchell, p 517
[12] Wai 898 # A79 Husbands and Mitchell, p 517
[13] Wai 898 # A79 Husbands and Mitchell, p 517
[14] Wai 898 # A79 Husbands and Mitchell, p 517

45. Between 1892 and the end of 1907 there were 174 blocks where land was subsequently recorded as taken for survey costs in the district. Across these blocks an average (mean) of 7.3 percent of the land was taken.[15]

46. By the end of 1908 Māori owners lost 80,625 acres of the inquiry district to survey costs.

47. Over three quarters (77 per cent) of the total area lost by 1908 was alienated through Māori selling land to pay for survey costs, with the remaining 23 per cent of the land taken directly by the Crown.[16]

48. Overall, the 80,625.28 acres equates to 6.35 per cent of the original acreage of the inquiry district although this figure may be an underestimate as details of land lost through survey liens were only found for 41 of the 87 blocks.[17]

49. The Crown later enacted the Native Land Act 1931 empowering the Native Land Court to make orders for the payment of survey costs.

50. Under the legislation the requirement that 5 percent per annum interest be paid on survey debt continued but this interest could only be charged for a maximum of five years (where as under earlier legislation it was for an indefinite period).

Rangitoto Tuhua 55A

51. The claimants and their tupuna had interests in the Rangitoto Tuhua block.

52. In breach of its duties under Te Tiriti o Waitangi the Crown used surveying legislation and practices to acquire and 288 acre share in the Rangitoto Tuhua 55 Block:

    52.1 On 23 October 1888, Henry Edwards read out the application for the very substantial RangitotoTuhua block which set forth the boundaries, names of applicants, hapu etc. He also produced a map of the block;

[15] Wai 898 # A79 Husbands and Mitchell, p 517.
[16] Wai 898 # A67 Boulton, p 429.
[17] Wai 898 # A67 Boulton, p 430.

52.2 An 'application for survey' and stamped by the (then) Lands and Survey Office on 29th August 1900 was drawn in respect of the 'Rangitoto Tuhua No 52, 55, 57, 56, 60, 61 and 65 blocks' and signed by 'Hiru Petere Kereti, Hohepa Petera, Mehana Thuhoro and Parekaihina Tuhoro'("the signatories"). The claimants say none of the signatories were authorised;

52.3 The Rangitoto Tuhua block was subject to a series of partitions and on 29 November 1900 an order was issued for the Rangitoto Tuhua No55 block containing 1,548 acres and was awarded to 28 owners;

52.4 A mortgage in favour of the surveyors was entered against Rangitoto 55 under the Native Land Act 1894. The Crown could take land to recover survey costs;[18]

52.5 In addition to securing a mortgage over the land the Native Land Court Act 1894 allowed the Crown to recover survey costs by taking a portion of land or deduct survey costs from the purchase money before distributing it to the owners. Such land was vested in the Surveyor General and became Crown land:

a) On 15th November 1906, the block was partitioned into A and B blocks for definition of the Crown's interests (arising from survey costs);[19]

b) On 15th November 1906 it was ordered that the Chief Surveyor agreed to accept the sum of 37-91 in full satisfaction of the survey costs and an award of 288 acres and 3 roods in the form of Rangitoto Tuhua 55A to the Crown.

53. The claimants say the Crown was wrong in acquiring Rangitoto Tuhua 55A for compensation of suvery costs because the initial 'Application for Survey' is not a clearly defined document in that it is incomplete, inaccurate, and there is no indication to show the survey reflected the wishes or needs of the legitimate owners of the Rangitoto Tuhua 55 block.

[18] Wai 898 # A67 Boulton, p 388
[19] Wai 898 # A60, Berghan, Block Research Narratives, p 970

54. The following facts are relevant in respect of the Crown surveying practices in of the Rangitoto Tuhua 55A Block:

54.1 The Crown failed to consult with and obtain the consent of the relevant 28 owners of the book when discussing the initial survey proposal;

54.2 There was a lack of certainty as to the purpose for which the initial survey was required. The initial survey form sets out two purposes;

a) The first pertains to a boundary survey for the purposes of ascertaining title;

b) The second purpose relates to surveying for sub-division purposes;

54.3 The basic survey practice was for those authorising the survey to cross out one of the above alternatives. This did not occur and the claimants say this is because those who signed did not understand or read the survey form;

54.4 Ownership of the block is shown to have been established prior to the survey and partition yet those who signed the application are not recorded as the owners on the original schedule of ownership for the block;

54.5 The application did not properly define the survey boundaries; and

54.6 The block falls on the boundary of a number of survey districts and the survey offices' records survey are incomplete, inconsistent and inaccurate.

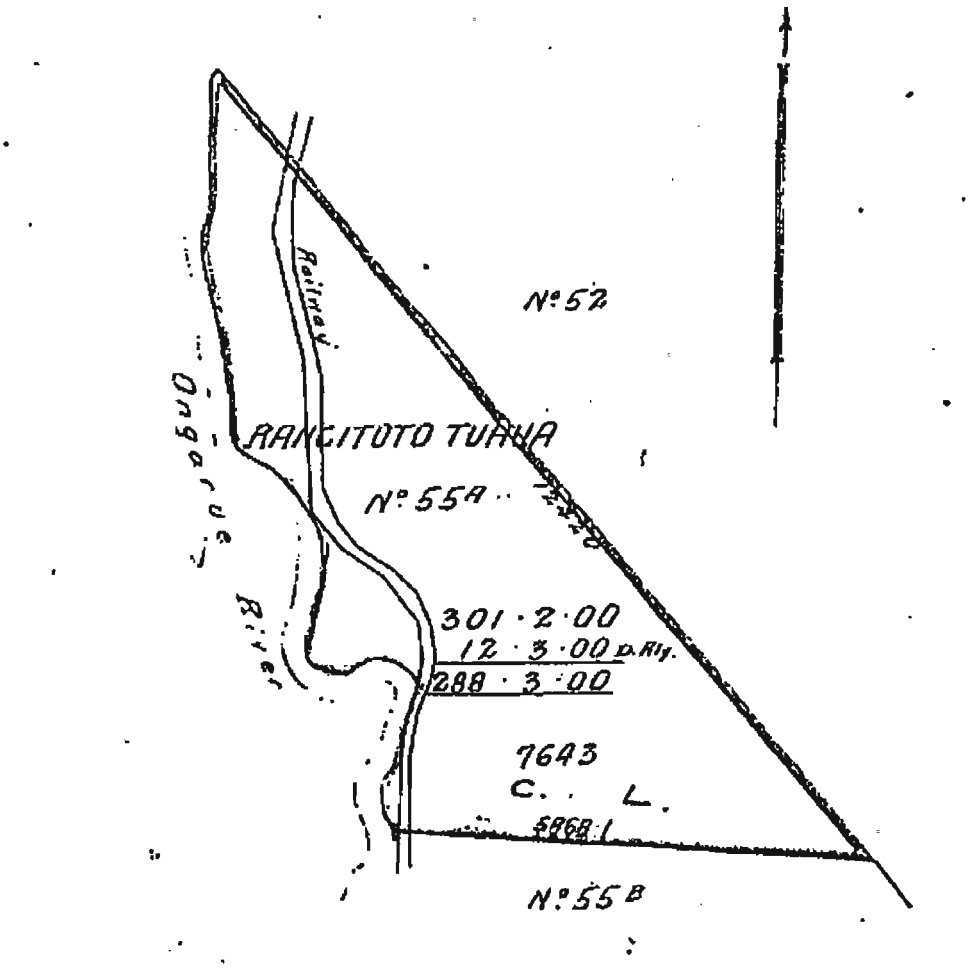
Recovery of the land

55. The claimants say that subsequent land dealings in respect of the Rangitoto Tuhua 55A block by the Crown has made the return of the land to the claimants difficult. In particular:

55.1 Since the Rangitoto Tuhua 55A block was transferred to Crown ownership the land has undergone several changes to its boundaries, and Proclamation orders have been gazetted setting aside areas for rail, road, education and other uses;

55.2 Enquiries regarding the recovery of land blocks, particularly those no longer required by the Crown have largely been made without success. The claimants say the existing system for the return of Crown lands to original owers is unable to assist the descendants of the original owners in their efforts for the return of Rangitoto Tuhua 55A to (their) Maori ownership.

56. The claimants do not wish the return of the parts of land that have been set aside for railway and public roading purposes so long as they remain for those purposes.



57. While a small portion of the land that was set aside for a school and later placed on the market for sale was eventually returned to the original owners the remaining land is under Crown ownership.

PREJUDICE:

58. The claimants say that they have been prejudicially affected by the Crown's actions with respect to surveying of the Rangitoto Tuhua block in that Crown survey practices:

58.1 led to a break down a traditional Maori land base which as a consequence caused the loss of rangatiratanga, mana motuhake, tikanga, te reo and matauranga Maori, all being vital cultural elements for the retention of the Maori culture;

58.2 led to the further alienation of the claimants land base and sites of significance;

58.3 left Maori within Te Rohe Potae with an insufficient land base for their present and future needs;

58.4 led to confusion, litigation, breakdown in relationships and Kotahitanga, and expense for the claimants; and

58.5 caused social and economic loss.

59. As a result of Crown intervention the whanau have been dislocated from their cultural, lands and resources and as a consequence destabilised from their traditional cultural and spiritual practices.

RELIEF:

60. The claimants, being desirous to achieve the removal of the prejudice inflicted upon them seek recommendations as follows:

60.1 That the Tribunal find that these claims are well founded;

60.2 Recognition of the claimants' rangatiratanga, mana motuhake Maori, spiritual beliefs and the restoration of the claimants self-governance including appropriate recognition by all Crown Departments and Agencies and Local Authorities within the claim area;

60.3 That the Crown provides a full and comprehensive apology for the breaches of the principles of the Treaty as outlined in the Amended Statement of Claim;

60.4 That the Crown provide full and comprehensive financial compensation;

60.5 That the Crown return all land owned by the Crown within the claimed area and any improvements thereon;

60.6 Pursuant to sections 8A-8HJ of the Treaty of Waitangi Act 1975 return to the claimants all relevant Crown land, including:

a) Land owned by any state owned enterprise;

b) Land held by an institution under the Education Act 1989; and

c) Land vested under the New Zealand Railway Incorporation Restructuring Act 1990, or any interest in any such land and together with any improvements thereon.

60.7 The provision of easements and such other access as is necessary to relieve all the claimants land within the claim from its status as landlocked land;

60.8 Make provision for the participation of the claimants on all statutory boards, authorities, agencies, companies and other Crown organisations that function within the claim area;

60.9 Pay the full costs of the claimants for the preparation and presentation of this claim and the cost of recovering any land recommended to be returned or other costs incurred in securing the implementation of recommendations; and

60.10 Any further relief that this Tribunal deems appropriate.

F. AMENDMENT

61. The claimants reserve the right to amend or add further to this Statement of Claim as appropriate.

This Amended Statement of Claim is filed by **Aidan Henry Charles Warren/Haylee Putaranui,** Solicitors for the claimants. The address for service of the claimants is at the offices of McCaw Lewis Lawyers, Solicitors, Level 1, One on London, 1 London Street, (P O Box 9348, DX GP20020), Hamilton.

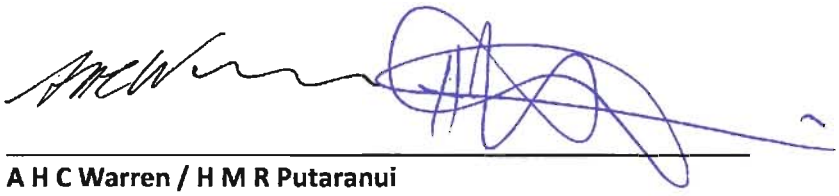
Documents for service on the abovenamed claimants may be left at that address for service or may be:

a. Posted to the solicitor at P O Box 9348, Hamilton;

b. Left for the solicitor at a document exchange for direction to DX GP20020, Hamilton; or

c. Transmitted to the solicitor by facsimile to (07) 839 4652.

DATED this 9th day of December 2011



A H C Warren / H M R Putaranui
Counsel for the Claimants