

**IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND**

WAI 1409

IN THE MATTER OF

**The Treaty of Waitangi Act
1975**

AND

IN THE MATTER OF

Te Rohe Pōtae District Inquiry

AND

IN THE MATTER OF

**A claim by Marge Pongo
Rameka for and on behalf of
Ngāti Ngutu and Ngāti Hua**

FIRST AMENDED STATEMENT OF CLAIM

16 December 2011



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THE CLAIMANT STATES

1 INTRODUCTION

- 1.1 This Claim is brought by Marge Rongo Rameka (“Claimant”) on behalf of herself, her whānau, and the hapū of Ngāti Ngutu and Ngāti Hua.
- 1.2 The Claimant states that she is Māori and that both her, her whanau and Ngā Hapū o Ngāti Ngutu and Ngāti Hua, have been prejudicially affected by the acts, omissions, policies and practices of the Crown in Right of New Zealand as set out in this Statement of Claim.

2 ADOPTION OF GENERIC CLAIMS

- 2.1 The Claimant adopts the following generic statements of claim filed by Counsel in the Te Rohe Pōtae Inquiry District.
 - a. Overall Land Alienation
 - b. Crown Purchasing Issues
 - c. The Native Land Court
 - d. Public Works Takings
 - e. Māori Land Administration and Development
 - f. Economic Development
 - g. Tikanga
 - h. Environment

- 2.2 The Claimant reserves the right to raise issues in relation to any of these generic pleadings that are not specified below following the completion of claimant research. Such claims include the taking of land under the public works regime for the Tokanui hospital and farmlands, and the effects of Raupatu on Ngāti Ngutu and Ngāti Hua.

FIRST CAUSE OF ACTION: ALIENATION OF TE AWAROA A

3 Duty

- 3.1 The Crown has a duty to actively protect Ngāti Ngutu in the exercise of their tino rangatiratanga o ratou whenua, o ratou kainga, me o ratou taonga katoa.

4 Breach

- 4.1 The Crown, in breach of Ko Te Tuarua o Te Tiriti o Waitangi, and the corresponding principles of active protection and good faith, acquired vast amounts of Ngāti Ngutu and Ngāti Hua land in the Te Awaroa block through private purchasing and public works takings.

SECOND CAUSE OF ACTION: OPERATIONS OF THE NATIVE LAND COURT

5 Adoption of Generic Pleadings

- 5.1 The Claimant's adopt the generic pleadings filed in this inquiry on the Native Land Court.
- 5.2 Prior to the determination of title by the Native Land Court, Ngāti Ngutu and Ngāti Hua exercised mana whenua over their land on a communal basis, in accordance with Tikanga Māori.
- 5.3 The Native Land Court, in investigating the claims to title of Te Awaroa A, vested the land in named individuals rather than hapū.
- 5.4 By vesting land in individuals, rather than the hapū, the Native Land Court destroyed the collective use and administration of the land exercised by Ngāti

Ngutu and Ngāti Hua.

- 5.5 The individualisation of title to Māori land led to the alienation of land away from Ngāti Ngutu and Ngāti Hua.

THIRD CAUSE OF ACTION: GIFTING OF LAND FOR THE RAKAUNUI NATIVE SCHOOL

6 Duty

- 6.1 The Crown has a duty to provide for the return of lands taken for public works purposes to the former owners, or the descendant's thereof, in circumstances where the land taken is no longer required for the purpose for which it was taken.

7 Breach

- 7.1 In breach of Ko Te Tuarua o Te Tiriti o Waitangi, and the principle of partnership, Ngāti Ngutu and Ngāti Hua were required to gift land to the Crown for the establishment of a school and contribute to the building, maintenance, and operational costs of the school. This was in direct contrast to the general education system operating at the time whereby non-Native Schools established for the benefit of Pākehā were funded entirely through the Crown accounts, using Crown land, or land validly purchased from private owners.
- 7.2 In breach of Ko Te Tuarua o Te Tiriti o Waitangi, and the principles of good faith and partnership, the Crown failed to take adequate steps to ensure the return of land taken for the Rakaunui Native School to the former owners (and/or their descendants) of the land.

8 Particulars

The Legislative Framework

- 8.1 The Native Schools Act 1867 provided for the establishment of Native Schools

on what was known as the “partnership model”.¹

- 8.2 Under the Act, land was to be gifted to the Crown by Māori and would be held in trust for ever for the purposes of a Native School. The amount of financial support for the construction of the school offered by the Crown was conditional on the amount of land gifted. Generally speaking, the more land gifted to the Crown, the greater the financial contribution made by the Crown.²
- 8.3 Subsequent legislation re-enacted the Native Schools provision, and in 1900 Native Schools was added to the list of types of public works for which land could be taken under the Public Works Act 1894.³
- 8.4 Until 1969, the Native School system ran in parallel to the public school system administered by the Education Boards.⁴
- 8.5 Whereas the Crown expected Māori to provide land for a Native School free of charge, the establishment of general public schools was funded from the Crown accounts using either Crown land, or land purchased from private landowners.⁵
- 8.6 The establishment of a Native School was, therefore, conditional on a request from a Māori community, and the provision of a suitable site, without charge.⁶

Establishment of Rakaunui School

- 8.7 Following requests from Māori living on the Awaroa Block in 1904 and 1906, an Inspector of Native Schools visited the district in August 1906 to advise on a suitable site for the establishment of a Native School.⁷
- 8.8 Following a second visit to the district in May 1907, the Inspector recommended

¹ D Alexander *Public Works and Other Takings in Te Rohe Potae District* (A Report Commissioned by Crown Forestry Rental Trust, December 2009) (Wai 898, #A63) at page 403, at page 82

² *Ibid*, at page 82

³ *Ibid*, at page 187

⁴ *Ibid*, at page 83

⁵ *Ibid*, at page 84

⁶ *Ibid*, at page 187

⁷ *Ibid*, at page 403

that a Native School be established at Rakaunui.⁸

- 8.9 The proposed site for the Rakaunui Native School was located on the Awaroa A3 block.⁹
- 8.10 The Inspector recorded that Ngāti Hua offered to gift the land to the Crown for the establishment of a Native School.¹⁰
- 8.11 The land for the Rakaunui Native School was acquired under the Public Works Act by the Crown in January 1909.¹¹
- 8.12 Despite considering the land a gift from Ngāti Hua, the Crown proceeded to acquire the land under the Public Works Act on the basis that it would be next to impossible to obtain the land through a Deed of Transfer signed by all 42 owners of the land.¹²
- 8.13 No application was made by the Crown to the Native Land Court for an order determining compensation payable.¹³

Return of Gifted Land

- 8.14 As land for Native Schools was gifted by Māori to the Crown, it is accepted practice that the Crown would return the land to the former owners (or the descendants thereof) when the Crown no longer had need for the site.¹⁴
- 8.15 The Rakaunui School was closed in 1967.¹⁵
- 8.16 The site was deemed surplus to requirements by the Education Department in March 1968 and the land was transferred to the Ministry of Works for disposal. The Ministry considered that the land should be returned to the former owners

⁸ *Ibid*

⁹ *Ibid*, at page 406

¹⁰ *Ibid*, at page 405

¹¹ *Ibid*, at page 407

¹² *Ibid*, at page 406

¹³ *Ibid*, at page 407

¹⁴ *Ibid*, at page 309

¹⁵ *Ibid*, at page 313

free of charge.¹⁶

- 8.17 In August 1968, the Ministry applied to the Māori Land Court for the re-vesting of the land in the descendants of the former owners.¹⁷
- 8.18 The Court heard applications by Martin Searancke, Rohe Takiari and the Chairman of the Rakaunui Marae Committee, all seeking to have the land returned to them individually. The Court held that the land should be vested solely with Rohe Takiari. Further, the Court expected Takiari to purchase the land from the Crown.¹⁸
- 8.19 Despite the land being taken from 42 owners in 1909, and a Crown commitment to return the land to the descendants of those owners in the spirit of the gift of the land, the Māori Land Court decided to vest the land in one individual.¹⁹
- 8.20 On receipt of the purchase money from Rohe Takiari, the Ministry of Works forwarded said money to the Court Registrar, asking that it be arranged for the Māori Trustee to distribute the funds to the Rakaunui Marae Committee as representative of descendants of the former owners of the land.²⁰
- 8.21 The Crown had sought to shift the responsibility for dealing with the gift to the Māori Land Court. The attempt to provide cash compensation, in lieu of the continued provision of a Native School for Ngāti Hua and the engagement with the descendants of the former owners of the land was a breach of the trust established with the gifting of the land to the Crown in 1909.²¹

FOURTH CAUSE OF ACTION: TAKING OF LAND FOR SCENERY PRESERVATION PURPOSES – THE AWAROA SCENIC RESERVE

9 Duty

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*, at page 315

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ *Ibid*

9.1 The Crown has a duty to actively protect Ngāti Ngutu in the exercise of their tino rangatiratanga o o ratou whenua, o ratou kainga, me o ratou taonga katoa.

10 Breach

10.1 In breach of Ko Te Tuarua o Te Tiriti o Waitangi and the principles of active protection and good faith, the Crown facilitated the loss of the claimant's land through the taking of land for scenery preservation purposes under the Scenery Preservation Act 1903.

11 Particulars

11.1 The Claimant adopts the generic public works statement of claim, insofar as it relates to takings for scenery preservation purposes.

11.2 By proclamation dated 23 October 1919, the Crown acquired 32 acres, 2 roods, and 27 perches of land from Te Awaroa A2C for the creation of the Kawhia Harbour Scenic Reserve.²²

11.3 In September 1920, the Native Land Court awarded £98 in compensation for the taking.²³

FIFTH CAUSE OF ACTION: DESECRATION OF WĀHI TAPU AND URUPA

12 Duty

12.1 The Crown has a duty to actively protect Ngāti Ngutu and Ngāti Hua in the exercise of their tino rangatiratanga o o ratou whenua, o ratou kainga, me o ratou taonga katoa.

13 Breach

13.1 The Crown, in breach of Ko Te Tuarua o Te Tiriti o Waitangi, has failed to actively protect the wāhi tapu, urupa and other taonga sites of Ngāti Ngutu Ngāti

²² *Ibid*, at page 534

²³ *Ibid*, at page 535

Hua.

14 Particulars

- 14.1 The Claimant adopts the generic statements of claim on tikanga and the environment.
- 14.2 The rohe of Ngāti Ngutu and Ngāti Hua contains many sites of cultural significance including wāhi tapu.
- 14.3 The Crown has historically failed to provide for the adequate protection of these sites when undertaking land purchases, or public works taking.
- 14.4 As a result, wāhi tapu sites of significance to Ngāti Ngutu Ngāti Hua have been desecrated.²⁴
- 14.5 Crown purchasing and public works takings have also deprived Ngāti Ngutu and Ngāti Hua of the traditional use and enjoyment of wāhi tapu and other sites of importance.
- 14.6 The land taken for the Kawhia Harbour Scenic Reserve included a traditional pa site, urupa, and kumara and hangi pits.²⁵
- 14.7 Ngāti Ngutu and Ngāti Hua no longer exercise tino rangatiratanga over those sites.²⁶

15 RELIEF SOUGHT

- 15.1 The Claimant seeks, by way of relief for the prejudice caused:
 - a. An acknowledgment that the above claims are well-founded and that the Crown has breached its obligations under Te Tiriti o Waitangi;
 - b. Return of land acquired or purchased that is still in the ownership and/or control of the Crown;

²⁴ Claimant Evidence

²⁵ Claimant Evidence

²⁶ Claimant Evidence

- c. An apology from the Crown in respect of the prejudice caused by Crown actions; and
- d. The payment of compensation for land taken by the Crown and the repercussions of such action.

16 LEAVE SOUGHT FOR FURTHER AMENDMENT

16.1 This amended statement of claim was prepared utilising the research, information and resources that were available as at the date of filing.

16.2 The Claimant seeks leave to file further amended particulars of claim and relief sought following the grant of legal aid funding for this claim and on the completion of further research into the abovementioned claim issues and / or any other claim issues that the Claimant wishes to develop.

Dated this 16th day of December 2011



Joshua Hitchcock



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Counsel for the Claimants



Larry Alexander
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