

**BEFORE THE WAITANGI TRIBUNAL
WAI 898
WELLINGTON
WAI 2134**

IN THE MATTER of The Treaty of Waitangi Act 1975

AND Claims in Te Rohe Potae Inquiry
consolidated under Wai 898

AMENDED STATEMENT OF CLAIM FOR WAI 2134

Dated: 16 December 2011



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MAY IT PLEASE THE TRIBUNAL

THE CLAIMANTS

1. The Claimant is Henry Paul who brings this claim on behalf of himself and Ngati Patupo-Aotea (“**the Claimant**”) residing in Te Rohe Potae.

THE CLAIM AREA

2. The Claim area concerns the Aotea Harbour including Te Mania Block, Aotea South Block, Maukutea and Horoure. Te Kakawa marae on the southern shores of Aotea Harbour is the base of all the claimants whakapapa.

STATUTORY CLAIM ELEMENTS

3. The Claimant alleges that his claim meets the elements required of a claim under section 6(1) of the Treaty of Waitangi Act 1975 namely that:

(a) He is Maori, and

(b) He has been and continues to be or is likely to be prejudicially affected by the various Acts and omissions of the Crown including its ordinances,

acts, regulations, orders, proclamations, statutory instruments, policies, practices, acts and omissions of the Crown or its agents.

DUTIES

4. The claimant asserts that the Crown/kawanatanga at all times has duties under te Tiriti to:

- (i) Ensure that Maori retained their lands and other properties and taonga.
- (ii) Ensure that Maori retained sufficient land to sustain their current and future needs.
- (iii) Ensure that Maori can exercise tino rangatiratanga, Maori lore and customs at all times.
- (iv) Actively protect Maori and their land, resources, and other things important to them to the fullest extent possible.
- (v) Ensure that Maori were able to develop their land in a consistent manner with their customs.

BREACHES

5. The Crown has breached their duties by failing to:
- (i) ensure that Ngaati Patupou retained their lands, waterways, main food sources and all other taonga.
 - (ii) Ensure that Ngaati Patupou were treated in a manner of good faith when dealing with them especially in manners regarding land control and deprivation.
 - (iii) Protect the rohe of Ngaati Patupou and the surrounding areas.
 - (iv) Protect Ngaati Patupou wahi tapu sites including pah sites and other areas of significance.
 - (v) Consult with Ngaati Patupou over the confiscation of their lands.
 - (vi) Consult with Ngaati Patupou on matters regarding public works takings.
 - (vii) Protect the Maori language within Te Rohe Potae.

PARTICULARS

Land Loss claim

6. The operation and impact of the native land laws was designed and implemented in such a way that resulted in massive land loss for the Claimant and their surrounding community. Specific examples of this are as follows:

Aotea South

7. In 1887 the Native Land Court awarded 1502 acres of land during the hearing of the Manuaitu block, which made up the block commonly known as Aotea South.
8. 380 acres of Aotea South was granted to Roka and others by the Native Land Court. This decision to partition the block was held over and referred to the Appellate Court which led to a partition being granted by the Appellate Court over the 380 acres and the block being renamed as Aotea South No. 1 in 1896.¹
9. Thomas Goodfellow sought to obtain 318 acres of this block, but the Minister of Lands informed him that he had to get the majority of owners to apply to the Governor for an Order in Council

¹ *Te Rohe Potae Inquiry District Research Assistance Projects: Block Research Narratives*, Paula Berghan, Walghan Partners, 6 July 2009, p 117

excepting Aotea South No. 1 from section 117 of the Native Land Court Act 1894, which stated that no land held by Natives could be sold without their permission. Despite this restriction in the Native Land Court Act 1894, this block was acquired by D L Morrison.² This acquisition was made at a substantially low price, and it meant that Ngati Patupo was not left with sufficient lands to maintain themselves.

10. Further alienations occurred through the use of leases and purchases during this period. Aotea South block 3B2 (109 acres) in 1939 for 42 years at £20 per year; Aotea South 3C2 (63 acres) in 1950 for 21 years at £18 per year and Aotea South block 2 (580 acres) was purchased for £250 in 1955.³ This purchase price is far below the market price, as it equates to being around only 8 shillings per acre.

11. The Aotea South Block went through 19 partitions between 1896 and 1967.⁴ This kind of partition further fragmented the owners' ability to use the land in an effective and productive way that was consistent with their cultural values and customs.

² *Te Rohe Potae Inquiry District Research Assistance Projects: Block Research Narratives*, Paula Berghan, Walghan Partners, 6 July 2009, p118

³ *Te Rohe Potae Inquiry District Research Assistance Projects: Block Research Narratives*, Paula Berghan, Walghan Partners, 6 July 2009, p119

⁴ *Te Rohe Potae Inquiry District Research Assistance Projects: Block Research Narratives*, Paula Berghan, Walghan Partners, 6 July 2009, p117-119

12. Today only Aotea South No. 3C1A remains in Maori ownership.⁵

This block represents only 2.5% of the original Aotea South block.

Wahi Tapu and Environment

13. In 1998 Aotea Estate Limited applied to Environment Waikato (“EW”) for a water permit over their subdivision on the Aotea harbour peninsula in the Aotea South block. EW deemed that consultation with local iwi had occurred to an adequate level as evidenced by a letter signed by John Apiti.⁶

14. This is incorrect, John Apiti did not consider that letter to be a form of consultation, he rather thought it was a testimonial and he accordingly lodged an opposition to the application. This permit consent was granted despite the opposition, and despite the fact that no consultation with Maori had occurred over the permit.⁷

15. When further consents were needed in 2003 for the subdivision, the developers met with local Maori, who expressed concern over the previous lack of consultation with them in regards to the permits

⁵ *Te Rohe Potae Inquiry District Research Assistance Projects: Block Research Narratives*, Paula Berghan, Walghan Partners, 6 July 2009, p120

⁶ *Te Rohe Potae Environmental and Wahi Tapu Report*; Michael Belgrave & ors.; August 2011; p 76

⁷ *Te Rohe Potae Environmental and Wahi Tapu Report*; Michael Belgrave & ors.; August 2011; p 76

granted. They were assured that this time meaningful consultation would occur before the permits could be granted.⁸

16. This did not occur. The attempts on behalf of the developers were minimal at best, and made on a timeline that cannot be construed as reasonable and fair to the owners and interested parties.⁹ Further local iwi members were later banned from attending meetings regarding the development project,¹⁰ and when attempts were made by the iwi to meet with the developers, they were not contacted in relation to the proposed meeting.¹¹

17. The developers also failed to make meaningful contact with all relevant iwi members.

18. On the rare occasions when they did consult with local iwi members, they would only talk to one member, rather than consulting with all iwi and hapu that had an interest in the subdivision site.

19. Archaeologists stated that there were a number of sites within the subdivision that are significant to Maori, and that if the

⁸ *Te Rohe Potae Environmental and Wahi Tapu Report*; Michael Belgrave & ors.; August 2011; p 81

⁹ *Te Rohe Potae Environmental and Wahi Tapu Report*; Michael Belgrave & ors.; August 2011; p 82

¹⁰ *Te Rohe Potae Environmental and Wahi Tapu Report*; Michael Belgrave & ors.; August 2011; p 86

¹¹ *Te Rohe Potae Environmental and Wahi Tapu Report*; Michael Belgrave & ors.; August 2011; p 94

development went ahead, up to 80% of those sites would be destroyed.¹²

20. Because of this, Pah sites in the Rohe of Patupou have been desecrated, Horaure Pah, Puuraho Pah, and Owhakarito Pah, at Maukatea, Aotea.

21. At Horaure Pah is the site of a Tuahu (a sacred place shrine used for spiritual purposes), sacred to the iwi.

22. There are other sacred sites that have been destroyed by this development, some of those include the site where Taroo and kuumara were brought on the Tainui waka from Hawaikii, and grown at Aotea, by Whakaotirangi, Principal wife of Hoturoa, Captain of Tainui Waka. She named these sites Hawaikii and Hawaikii-iti.

23. There is also the site of the sacred bird Korotangi, along with the three sacred springs Korotaa, Korotangi and Korotau.

24. Further to this The New Zealand Historical Places Trust was not informed of sites of significance within the subdivision. This is contrary to the RMA and a further example of the failure of the

¹² *Te Rohe Potae Environmental and Wahi Tapu Report*; Michael Belgrave & ors.; August 2011; p 90

Crown to require compliance with legislation that could have protected Maori.

25. This lack of consultation demonstrates the local council's unwillingness to comply with their own standards imposed upon themselves as part of the requirements under the Resource Management Act ("RMA").

REMEDIES

1. The claimant therefore seeks the following remedies:

- (i) The return of any Crown owned land at Aotea Harbour, as a substitute for the land taken;
- (ii) A formal apology from the Crown for the wrongdoing incurred by the claimant; and
- (iii) Compensation to be paid for the taking of the land.

CONCLUSION

33. The claimant seek leave to file further particulars by way of further amendments to the statement of claim once additional research has been completed.

Dated at Wellington this 15th day of December 2011.

Kathy Ertel,

Kathy Ertel
Counsel for the Plaintiff