OFFICIAL

In the Waitangi Tribunal

Under	The Treaty of Waitangi Act 1975
In the Matter of	The Central North Island Inquiries (Wai 1200)
And	
In the Matter of	The claims to the Waitangi Tribunal by: Margaret Makariti Poinga and Alec Philips; Wiparaki Allen Pakau; Leonard Hiraka Rongo Hikairo Erickson; and Heta Konui, Te Maioro Konui and Rawinia Gail Konui-Paul for and on behalf of Ngati Hikairo

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Amended Consolidated Statement of Claim for Ngati Hikairo

Dated 8 December 2004

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Waitangi Tribunal
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Ministry of Justice
WELLINGTON

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A JURISDICTION

1 Introduction

1.1 The claimants are:

a. Margaret Makariti Poinga and Alec Philips (the named claimants for Wai 37 and Wai 933);

b. Wiparaki Allen Pakau (the Wai 833 named claimant);

c. Leonard Hiraka Rongo Hikairo Erickson (the Wai 965 named claimant); and

d. Heta Konui, Te Maioro Konui and Rawinia Gail Konui-Paul (the named claimants for Wai 1044).

1.2 The claimants claim for and on behalf of themselves and Ngati Hikairo. In respect of Wai 37, the claimants claim for and on behalf of themselves and Ngati Hikairo/Ngati Rakeipoho. To that extent, references in this statement of claim to Ngati Hikairo should be read as referring to both Ngati Hikairo and Ngati Rakeipoho.

1.3 This statement of claim replaces and incorporates the earlier statements of claim filed under the Wai numbers 37, 833, 933, 965 and 1044.

2 Multiple Inquiries into the Claims of Ngati Hikairo

2.1 The lands in which Ngati Hikairo has interests have been split into three separate districts for the purposes of the Waitangi Tribunal's inquiries.

2.2 Ngati Hikairo have substantial interests in respect to the National Park and Whanganui Inquiry districts, which will be inquired into as part of the National Park (Wai 1130) and Whanganui (Wai 903) Inquiries.

2.3 In the Central North Island inquiry, Ngati Hikairo's interests are concentrated in the southern part of the Taupo Inquiry District.

2.4 Ngati Hikairo reserves the right to pursue claims to their lands in such other inquiries as may be subsequently established by the Waitangi Tribunal and to amend this statement of claim accordingly.

3 Overview of the claim

3.1 The claim relates to Crown actions and policies with respect to Ngati Hikairo's interests in the areas of land, lakes, rivers, forests, fisheries and other resources in the traditional rohe of Ngati Hikairo, including the effects (including the social effects) on Ngati Hikairo of the Native Land Court, Crown purchasing policies and practices, survey liens, Crown forestry policies, Crown policies relating to rivers and waterways, Crown policies relating to environmental management, and other actions or omissions of the crown that were and remain in breach of the Treaty of Waitangi.

3.2 The claimants state that they have been or are likely to be prejudicially affected by the Ordinances, Acts, Regulations, Proclamations, Notices and other Statutory Instruments, and the policies, practices, acts or omissions of the Crown as are particularised in this statement of claim.

3.3 The claimants further state that all of the Acts, Regulations, Orders, policies, practices and actions taken, omitted or adopted by or on behalf of the Crown referred to are and remain inconsistent with the terms and principles of the Treaty of Waitangi.

B BACKGROUND

4 The rohe of Ngati Hikairo

4.1 Ngati Hikairo are a people of the south Taupo region. Their principal marae are located between lake Rotoaira and the slopes of Mount Tongariro, at Papakai and Otukou.

4.2 Ngati Hikairo recognise their strong ties with Ngati Tuwharetoa, but today are regarded as a distinct iwi, separate from Ngati Tuwharetoa.

4.3 The Rohe of Ngati Hikairo is encompassed within the following boundaries: from the summit of Tongariro where sits Te Wai-Whakaata o Te Rangihiroa to the summit of Te Maari, to the Kaimanawa Ranges, including the Waikato River back to the West of side of Pihanga, to the summit of Kakaramea, to the summit of Tihia, to the summit of Maungatote, to Te Rena, to the Whanganui River that is sourced from the Punawai o Raakeipoho on Tongariro, including Kakahi Marae, to the summit of Rua pahu, to the summit of Tongariro.

4.4 This area includes all those blocks known as the Okahukura Blocks, the Taurewa Blocks, the Oraukura Blocks, the Ruamata Blocks, the Whangaipeke Blocks, the Ngapuna Blocks, the Rangipo Blocks and the Kaimanawa and Owhaoko Blocks and includes all those waterways in between Waikato (Tongariro), and Whanganui Rivers and the Lakes that include Maniaroto, Roto-a-ira and Rotopounamu, as well as the maunga Tongariro, Rua pahu and Ngauruhoe.

4.5 The claimants represent the descendants and rightful successors of the rangitira and those people who were the tangata whenua and exercised rangatiratanga over these lands and waters.

4.6 Within this area, Ngati Hikario held numerous kainga, urupa and waahi tapu and sites of significance for Ngati Hikario.

4.7 Blocks within the Taupo inquiry district in which Ngati Hikairo have interests recognised by the Maori Land Court include:

a. Whangaipeke, Pahikohuru, Te Whakao, Tauranga Taupo, Waiunu, Kaimanawa, Hautu, Oraukura, Ruamata, Tapapa and Pukawa.

4.8 Blocks within the National Park inquiry district in which Ngati Hikairo have interests recognised by the Maori Land Court include:

a. Okahukura, Papakai, Taurewa, Waimarino, Rangipo North, Waimanu and Lake Rotoaira.

4.9 Other blocks in which Ngati Hikairo have interests recognised by the Maori Land Court include:

a. Te Mako Mako, Ngapuna, Motukawa, Owhaoko and Reu Reu.

C CROWN TREATY BREACHES

5 The Native Land Court

5.1 Through the operation of the Native Land Court the Crown sought to facilitate the individualisation and fragmentation of title and ultimately the alienation of Ngati Hikairo lands. In doing so the Crown was in breach of the guarantees in article 2 of the Treaty and the Treaty principle of active protection.

5.2 The alienation of Ngati Hikairo land as a result of the operation of the Native Land Court was a primary source of Ngati Hikairo's subsequent impoverishment and social and economic marginalisation.

5.3 Investigations of title by the Native Land Court in the south Taupo region had the following consequences for all local iwi, including Ngati Hikairo:

a. Abandonment of cultivations, resulting in less food;

b. Substantial direct and indirect costs;

c. Surveys.

5.4 Land Court hearings were often very burdensome and expensive for local iwi, forcing them to relocate themselves for the hearings, and burdening them further with substantial food and accommodation costs and court fees (*Stirling, Taupo-Kaingaroa 19th Century Overview*, pp896-897, 923).

5.5 Ngati Hikairo were unable to pay for the costs of the survey of their lands due to general impoverishment.

5.6 Investigations of title to blocks within the rohe of Ngati Hikairo, and to which Ngati Hikairo sought, or were awarded interests included, but are not limited to those blocks listed in section 4 above.

5.7 The calculation and apportionment of survey liens imposed substantial costs on non-sellers within a block. Ngati Hikairo lost large portions of their lands as a result of survey liens imposed by the Native Land Court under the various Native Lands Acts in some or all of those blocks.

5.8 In addition to the financial costs there were hidden costs. These included the displacement of people as Native Land Court subdivisions and awards to the Crown meant that particular subdivisions on which individuals resided bore the survey charges for larger blocks belonging to bigger groups.

5.9 The Native Lands Acts, and in particular the Native Lands Act 1873, facilitated individual dealing and facilitated Crown purchase of Ngati Hikairo lands. In particular:

a. The Native Lands Act 1862 abolished Crown pre-emption and permitted direct purchase by private individuals.

b. The Native Lands Act 1865 created a European-style Native Land Court which aimed to ascertain customary ownership and convert it into an alienable freehold title.

c. The Native Lands Act 1862 s 13 and Native Lands Act 1865 s 25 required that blocks of land coming before the Court be properly surveyed. The Native Lands Act 1865 ss 38, 68 and 71 made clear that the cost was to be paid by the Maori owners alone.

d. The Native Lands Act 1865 s 68 allowed the Native Land Court to withhold the Crown grant until survey charges had been paid and similar provisions were included in all subsequent Maori land legislation.

e. The Public Works and Immigration Amendment Act 1871 s 42 permitted the Crown to advance purchase negotiations in special circumstances even when it had not passed through the Court. The Land Purchase Department interpreted those special circumstances very liberally to allow negotiations in Ngati Hikairo territory

whenever expedient in the 1870s, even while the Native Lands Acts were suspended.

f. From the Native Lands Act 1862 s 28, there was provision for the Crown to pay the survey costs and recover that expenditure from the owners. The Native Lands Act 1873 s 39 required Maori to guarantee that the survey costs would be paid either in cash or by transferring land to the Crown and s 73 empowered the Court to define a portion of the land to be transferred to the Crown to discharge all fees owing in respect of that land, or any other land owned by the same persons or tribe.

g. The Native Lands Act 1867 s 4, reiterated in the Native Lands Act 1873 s 6, allowed the Crown to prevent the operation of the Native Land Court by suspending the Native Lands Acts in proclaimed regions. This allowed both an effective Crown monopoly and an ability to deny rental payments on leased lands until the Court had determined title.

h. The Native Lands Act 1873 s 47 required all owners holding a customary interest to be listed on the memorial of title as tenants in common holding such shares as the Court determined. Customary communal ownership was thus fragmented into numerous individual shares.

i. The Native Land Amendment Act 1877 s6 entitled the Crown to apply for the Court to partition out the shares purchased by the Crown, dividing blocks into those held by the Crown and non-sellers. This avoided the 1873 Act's protective provision that all owners had to approve a sale.

j. The Crown used legislation to privilege itself in the purchasing process, especially in the Government Native Land Purchases Act 1877 which empowered the Crown to prohibit private purchasing in any block in which the Crown had begun purchase negotiations.

k. The Native Land Act Amendment Act 1878 s 7 allowed land to be transferred directly to private surveyors to meet survey debts.

l. The Native Land Court Act 1894 s 66 permitted the addition of interest on survey liens, up to a maximum of 5% per annum for 5 years.

6 Crown Purchasing

6.1 Substantial areas of blocks awarded to Ngati Hikairo by the Native Land Court were subsequently purchased by the Crown.

6.2 The Crown acquired substantial areas of the Hautu, Okahukura, Taurewa, Tawhai, Ohuanga, Papakai and Rangipo blocks and other blocks within Ngati Hikairo's rohe.

6.3 Crown purchasing was carried out under a variety of legal devices which placed the Crown in a monopoly position to the disadvantage of Ngati Hikairo. The Crown used these devices to drive down prices and buy land from Ngati Hikairo at less than market values.

6.4 Crown purchasing devices which operated disadvantageously to Ngati Hikairo included:

a. The use of proclamations to bar private parties from dealing with the land under s 2 of the Native Land Purchases Act 1877 and other enactments, thus depriving owners of the opportunity to sell at market values;

b. The payment of tamana, also known as 'groundbaiting';

c. Leasing land from Maori and vesting monopoly purchasing rights on the Crown as a term of the lease;

d. Suspending the operation of the Native Lands Acts in the Taupo and Bay of Plenty districts between 1873 and 1877 under s 4 of the Native Land Act 1877 and s 6 of the Native Land Act 1873; and

e. Reimposing Crown pre-emption on the entire country by s 117 of the Native Land Court Act 1894.

6.5 The Crown refused to pay rentals on blocks subject to leases before the Native Land court had awarded titles to the blocks but allowed its agent to

pay advances to individuals. These advances were then charged against the leased blocks. While these advances helped allay costs associated with the Native Land Court process in the short term they had serious long-term implications for the recipients who had to sell land in order to repay the Crown.

6.6 The Crown used tactics of arranging leases with Maori owners which were then used as a device to pressure the owners into land-selling. The Crown's failure to pay the rent on a regular basis, and its whittling away of the rental through charging of advances and survey costs against the land forced the majority of the block's owners to sell their interests to the Crown.

6.7 The Crown's ability to purchase individual interests in Maori land operated to the disadvantage of Ngati Hikairo. Treating the title-holders as absolute owners whose individual interests could be purchased on a piecemeal basis fostered divisions within communities and undermined traditional social structures.

6.8 The partitioning process as used by the Crown operated to the disadvantage of Ngati Hikairo by allowing individuals to sell land, causing community divisions and facilitating alienation of land to the Crown.

6.9 The Crown failed to establish adequate protection mechanisms or alternatively ignored or circumvented those that did exist

6.10 The Crown had no fair and reliable system of valuation in place at the time of its land transactions with Ngati Hikairo and this was to the disadvantage of Ngati Hikairo. Valuation for Crown purchasing was conducted by government land purchase officers without any means of independent review. There was no procedure for obtaining independent valuations from the Valuation Department until 1905.

6.11 Although earlier statutes imposed restrictions on the alienation of some blocks of investigated land, the Crown exempted itself from these controls by s 14 of the Native Land Purchase Act 1892 and s 52 of the Native Land Court Act 1894.

6.12 The Crown took advantage of Ngati Hikairo poverty during the later nineteenth century to buy large areas of land cheaply and to the detriment of Ngati Hikairo.

6.13 The system of Crown purchasing was unfair to Ngati Hikairo and in breach of the principles of the Treaty.

7 The Rohe Potae

7.1 In the twenty five years following the signing of the Treaty of Waitangi large tracts of land were alienated from iwi ownership at Whanganui (1849), Hawke's Bay (1851), Taranaki (1863) and Waikato (1864). In reaction to these actions by the Crown, the iwi of the interior of the North Island combined and established districts in which land sale would be constrained and decisions on land use and alienation would be affected only in the customary manner with tribal control, rather than by the Native Land Court process.

7.2 For this purpose, the Rohe Potae was created. This district included the land of Ngati Rakeipoho/Hikairo.

7.3 Initially the iwi of the Rohe Potae were opposed to any European intrusions in the area, and prevented any such intrusions after establishing Aukati (carved poles marking a line not to be passed).

7.4 From 1867 to 1885, there were a series of meetings between tribal and Crown representatives for the opening of the interior for access and settlement. Some particular agreements were reached but no general compact emerged until the 1880's. By 1880 the main trunk railway had extended to Marton in the south and Te Awamutu in the north.

7.5 The Crown wished to complete the section of the railway from Marton to Te Awamutu.

7.6 The Crown sought to survey the land and to have the Native Land Court settle the ownership of title so that land might be purchased by the Crown from individual Maori. The tribal leaders prevented surveys and Native Land Court hearings, except on the periphery of their land and in order that the borders of their land might be defined. Surveyors were not permitted into the

Rohe Potae until 1883 and then only for a railway line survey and an external boundary survey.

7.7 At about this time, at various places, arrangements or agreements were concluded for the opening of the Rohe Potae, on terms that would allow the tribes to control the manner and extent of settlement.

7.8 It was agreed between the tribes and the Crown (*Stirling*, pp823, 875):

a. That the tribes would sanction the construction of the main trunk railway line.

b. That only the major tribal boundaries were to be surveyed.

c. That the Crown would honour the tino rangatiratanga of the tribes, and that the Native Land Court would not intervene in the Rohe Potae except to award one title for each of the tribes within the Rohe Potae.

d. That decisions on the use, administration and alienation of the land would be effected through tribal committees or proper tribal representatives after tribal discussions in the customary way and that land would be leased only in this way and only to the Crown.

e. That no gold would be prospected without Maori consent.

f. That no liquor licenses would be granted in the district.

7.9 It appeared at first the agreement would be upheld. The Native Land Alienation Restriction Act 1884 restricted all land dealings in the district to the Crown, as the tribal leaders had asked, in order to keep out speculators, and s8 of the Railways Authorisation Act 1884 authorised the construction of the railway as a public work. Subsequently however, the arrangement or agreement was not upheld and the tribes including Ngati Hikairo/Rakeipoho were to lose large areas of land.

7.10 It is said that tribes gifted some of the land for railway line, stations and sidings. J Cowan in "*Romance of the Rail*" (Wellington 1928) supports this view, at p.52:

"The Government-through the Native Minister, the Hon John Bryce, and his successor, the Hon John Ballance succeeded in arranging with the Native chiefs for a passage for the iron rail, and the Maoris made a free gift of a chain width of land along the whole route, and also of land for stations." (emphasis added).

7.11 In accordance with tikanga, such a gift is to be returned when it is no longer required for the purpose for which it was given.

7.12 The Crown did not honour to the agreements effected with the Rohe Potae tribes. At first the surveyors began to survey only the tribal boundaries, as had been agreed. Soon after, it was found the surveyors had surveyed individual blocks along the Railway line. For example, by 1890, over 1,000,000 acres (which were included in the Waikato, Maniapoto, Hikairo/Rakeipoho, Rohe Potae lands) had been divided into 136 blocks within the tribal boundaries, and soon after the Native Land Court was to award those blocks to individuals. Similar sub-division occurred in relation to these parts of the Whanganui and Taupo nui a Tia which also lay within the 1884 Rohe Potae boundary.

7.13 The Rohe Potae, as defined in the Native Land Alienation Restriction Act 1884, included the Taupo-nui-a-tia block, which included Ngati Hikairo lands.

7.14 In 1886, in breach of the Rohe Potae compact, the Crown separated the Taupo-nui-a-tia block from the Rohe Potae. The block was then separately investigated and partitioned by the Native Land Court. This resulted in the individualization and alienation of vast areas of the block, including Ngati Hikairo/Rakeipoho lands.

7.15 The Native Land Alienation Restriction Act 1884 included an effective right of pre-emption for the Crown to purchase lands with the Rohe Potae, excluding the possibility of sale to private purchasers. Tribes were therefore only able to sell to the Crown.

7.16 The surveys and the laws and the application thereof under which the Court awards were made were contrary to the Treaty and the Rohe Potae compact, in that they broke the tribal rangatiratanga that the Treaty guaranteed and

that the compact was designed to preserve. This resulted in substantial land losses and the loss of the tribal economic base and tribal control.

7.17 The unauthorised survey and individualisation of blocks within the Rohe Potae breached the express guarantee in the Treaty of "undisturbed possession" of the lands of the tribes residing within the Rohe Potae.

7.18 Many acquisitions within the Rohe Potae and, after its demise, the rohe of the claimants were contrary to the agreement for the opening up of the district. They were also contrary to the Treaty of Waitangi in that:

a. The legislative executive and land Court actions enabling and/or leading to the fragmentation of the Rohe Potae were in breach of the Treaty of Waitangi, and the general law, and specifically of the agreement concerning the protection of the Rohe Potae.

b. The Crown purported to legislate for and acquire the interests of the individual owners without the sanction of the tribal group as a whole.

c. The Crown purported to legislate for and acquire the interests of the individual owners before the Native Land Court had determined the ownership, thereby prejudicing its own policy that lands would not be purchased until the true owners had been ascertained in accordance with law.

d. The land was sold by the wrong people.

e. The effect of the sale was to leave some hapu landless.

f. Some hapu rightfully entitled to participate were not participants in either the sales or the Native Land Court hearings, being given notice of neither.

g. The purchase price (if paid) was in any event, inadequate.

h. Maori were confined to reserves of unsold and usually the most inhospitable lands away from their turangawaewae, and were and have since been substantially excluded from access to the economy and resources of the area.

i. The Crown has not returned land acquired by it for certain purposes including railway purposes after the purpose ceased to exist.

8 North Island Main Trunk Railway Loan Application Act 1886

8.1 The Crown acquired large areas of land within the Rohe Potae, contrary to the agreement with the tribes concerned. The acquisition of such lands was specifically provided for in the North Island Main Trunk Railway Loan Application Act 1886 (and its amendments). Sections 3 and 4 of that Act authorised expenditure from the Public Works Fund not only for the cost of constructing the railway line, but for acquiring natives land en route. Section 5 of the Act disclosed an intention to acquire substantial native lands for railway reserves, the revenues from the reserves to reimburse the cost of construction and acquisition. More particularly

> "... two and a half percentum of the whole land so acquired shall be set apart and reserved in such blocks and at such times as the Governor shall direct; and it shall be lawful for the Governor, subject to the ratification thereof by resolution passed by both Houses of the General Assembly, to grant the same in such blocks as he shall think fit, as reserves for the endowment of such Education Boards and Hospital and Charitable Aid Boards and institutions within the North Island as he shall think fit; and the remainder of such lands shall constitute a railway reserve, the proceeds of which shall be applied as Parliament shall from time to time direct, in the construction of the said main trunk railway, and of branch railways, tramways, or roads in connection therewith."

8.2 In 1889 the North Island Main Trunk Railway Loan Application Act 1886 was amended so that 5% of any land acquired under 1886 Act was to be set aside as "... an endowment for the maintenance of primary education ..." the remaining 95% "shall constitute an endowment for the purposes of the North Island Main Trunk Railway, and may from time to time be sold, leased or otherwise alienated or disposed of ..." and the proceeds of such sale used for the construction of the "... Main Trunk Railway and of branch railways, tramways and roads thereto or in connection therewith".

8.3 Indirectly, the effect of this was that Maori were paying for the railway line, by being forced to sell lands at low rates to the Crown, which was then able to on-sell those lands for higher (market) rates.

8.4 Following individual land buying techniques huge blocks were to be purportedly purchased pursuant to these provisions amongst these were the Okahukura and Taurewa blocks.

8.5 On 10 July 1894 over 14,000 acres was gazetted as being held pursuant the provisions of section 5 of "The North Island Main Trunk Railway Loan Application Act Amendment Act 1889". This gazette notice states that the land detailed therein was "... acquired from the Native owners by Her Majesty the Queen, under the provisions of the North Island Main Trunk Railway Loan Application Act 1886 ...". The lands within the rohe of Ngati Rakeipoho/Hikairo that were included in the said gazette notice included Taurewa No 2A (500 acres), Taurewa No 3 (200 acres), Tawhai South (2000 acres) and the following Okahukura blocks: 8 (6,766 acres); 8A (592 acres); 8A No 2 (300 acres); 8B (802 acres); 8C (446 acres); 8D (446 acres); 8E (446 acres); 8F (446 acres); 8G (446 acres); 8H (446 acres); 8J (200 acres); 8K (200 acres); 8L (200 acres).

8.6 The purchase or acquisition of any land other than that contemplated in the agreement between the Crown and the tribes of the Rohe Potae was contrary to the guarantee in the Treaty of undisturbed possession of land, estates and forests that those tribes wished to retain.

8.7 The enactment of the North Island Trunk Railway Loan Application Act 1886 and its amending Act in 1889 expressed an intention on the part of the legislature to acquire land from Maori which was contrary to the agreement between the Crown and Maori as to the terms under which the Railway was to proceed through the Rohe Potae.

8.8 The acquisition of the Ngati Hikairo's lands pursuant to the North Island Main Trunk Railway Loan Application Act 1886 and held subject to the provisions of section 5 of the North Island Main Trunk Railway Loan Application Act Amendment 1889 were contrary to the Treaty. These lands were purportedly acquired for railway purposes yet they have never been used for such purposes and never returned or offered back to Maori.

The Taurewa Farm

8.9 The Taurewa Farm occupies approximately 5,584.107 hectares. It runs along State Highway 47 from the township of National Park, past the

Whakapapanui Stream and extends into the Okahukura and Taurewa Blocks. The portion of the Farm that lies east of the Whakapapanui River is within the rohe of Ngati Rakeipoho/Hikairo.

8.10 This land has been farmed as the Taurewa Farm, and managed by LandCorp Management Services Limited (now LandCorp Property Limited (in Liquidation)), a state owned enterprise duly constituted pursuant to the State Owned Enterprises Act 1986.

8.11 Included in the Taurewa Farm are lands that were acquired and held by the Crown under the provisions of the North Island Main Trunk Railway Loan Application Act 1886 and its 1889 amendment. These lands were the subject of the Gazette notice referred to above.

8.12 The portion of the Taurewa Farm that lies to the east of the Whakapapanui River was acquired by the Crown in breach of the Treaty.

8.13 The Taurewa Farm must not be sold or otherwise disposed of until the claims of Ngati Rakeipoho/Hikairo have been fully investigated and settled.

8.14 Landcorp Management Services Limited previously informed the claimants that the Taurewa Farm was to be disposed of. Disposal of the Taurewa Farm before the settlement of the Ngati Rakeipoho/Hikairo claim would amount to a further breach of the Treaty.

9 Forestry Issues

9.1 The principal issues relating to Crown forestry policy and Ngati Hikairo are:

a. Crown policies, enactments, acts and omissions relating to the Crown's acquisition of Ngati Hikairo's forests.

b. Crown policies, enactments, acts and omissions intended at restricting or prohibiting Ngati Hikairo's utilisation of forests situated on land blocks vested in Ngati Hikairo.

9.2 The blocks acquired by the Crown from Ngati Hikairo contained substantial areas of merchantable indigenous forest. These areas of forest were subsequently milled by the Crown and the Crown appropriated the proceeds

of such milling to itself in breach of the provisions and principles of the Treaty of Waitangi.

9.3 The Crown's acquisition of and milling of such areas of indigenous forest was a breach of the provisions and principles of the Treaty of Waitangi in that:

a. The Crown failed to pay a fair price for the forests:

b. The Crown failed to give any or any effective redress to petitions and complaints relating to the Crown's acquisition of the forests

9.4 The Crown took a sequence of actions aimed at preventing or restricting owners of Maori-owned blocks (including blocks owned by Ngati Hikairo from milling or from realising the full value of timber on their own lands. These included:

a. Enacting the Forests Act 1921-22, various provisions of which were intended to impose controls on areas of indigenous forest owned by Maori;

b. Enacting the Forests Act 1949, s 65 of which gave power to the Minister of Forests to prohibit the owners of areas of Maori freehold land from entering into forestry leases with private sawmillers;

c. Enacting s 218 of the Maori Affairs Act 1953, which also gave power to the Minister of Forests to prohibit owners of Maori freehold land from entering into forestry leases with private sawmillers;

d. Enacting s. 34 of the Soil and Rivers Control Amendment Act 1959, which allowed catchment boards to issue notices relating to specific areas prohibiting activities likely to facilitate soil erosion or cause deposits in watercourses;

e. Enacting provisions in the Town and Country Planning Acts of 1953 and 1977 which allowed local authorities to restrict or prohibit forestry operations on areas of Maori freehold land; and

f. Enacting the Forests Amendment Act 1993 which imposed further restrictions on milling indigenous timber.

Taurewa Blocks

9.5 Included amongst the lands wrongfully acquired as aforesaid are Crown Forest lands in respect of which return and compensation is sought pursuant to the Crown Forests Assets Act 1989.

9.6 The forest referred to is that currently known as Taurewa or Tongariro Forest and occupies the Taurewa No. 4 West, Taurewa No. 4 East, Taurewa No. 1 Blocks and subdivisions thereof.

9.7 Huge tracts of undeveloped hapuu Lands, much of which had had outstanding rates and absentee owners, were transferred to the Rotoaira Forest Trust.

9.8 The Government desired these land for Forestry to stabilise the soil, thereby reducing the risk of erosion that could put the Tongariro Power Development Scheme at risk.

The Tongariro Timber Company

9.9 On 23 December 1908, the Maniapoto-Tuwharetoa District Maori Land Board issued a grant to the Tongariro Timber Company by which the Company received sole rights to remove timber from 40,180 acres of Maori land together with an option over additional outlying areas of 19,285 acres. The lands covered by this arrangement included Ngati Hikairo lands. In return, the Company was to pay a royalty to the Board and construct a railway line running east from Kakahi.

9.10 The Tongariro Timber Company subsequently entered into arrangements with the Egmont Box Company for assistance in meeting its obligations. The Crown introduced legislation immediately afterwards, ensuring that if the Tongariro Timber Company failed to honour its obligations, any monies outstanding would come from any royalties the beneficial owners could otherwise expect to enjoy. These arrangements undermined the mana of the Rangatira. The hapuu lost mana and dignity as a result.

9.11 These arrangements ultimately resulted in litigation leading to the decision of *Te Heuheu Tukino v Aotea District Maori Land Board* 1940-41, NZLR 591. The Acts, regulations and statutes as quoted in that decision are inconsistent with Article Two of the Treaty of Waitangi. It was held that:

> "Any rights purporting to be conferred by such a treaty of cession as the Treaty of Waitangi cannot be enforced in the Courts except in so far as they have been incorporated in Municipal Law."

9.12 The promised railway and the associated benefits that it would bring to the hapuu never eventuated.

9.13 As a result the Hapuu have suffered hardship, through the loss of potential earnings, as well as the loss of land that was to have been set aside for the railway.

10 Loss of Mountains

10.1 Ngati Hikario/Rakeipoho have mana over Mount Tongariro. They have always had mana over this mountain and never consented to its gift to the Crown. This mana requires recognition and accommodation by the Crown.

10.2 Ngati Hikario/Rakeipoho have ancestors buried on the slopes of Mount Tongariro, these burial sites are waahi tapu and must not be disturbed.

10.3 Ngati Hikario/Rakeipoho deny that Chief Te Heu Heu Tukino had the authority to gift Mount Tongariro and Ruapehu to the Crown in 1887.

10.4 Mount Pihanga and Lake Pounamu are places of special significance to Ngati Hikairo/Rakeipoho. They have mana over this mountain and lake.

10.5 Ngati Hikario/Rakeipoho were wrongly dispossessed of these resources.

11 Geothermal Resources

11.1 Rights to use geothermal pools and springs were allocated according to Maori customary law. Ngati Hikairo used geothermal resources as follows *(Boast, The Hot Lakes: Maori Use and Management of Geothermal Resources from the evidence of European visitors,* Wai 1200 Doc#A24, 114-121):

a. Medicinal purposes, in particular for the treatment of skin diseases and rheumatic complaints;

b. Cooking and food preparation;

c. Heating of houses and meeting houses;

d. Washing and dry-cleaning clothing;

e. Bathing;

f. Extraction of various products, including kokowai, soap, and clay;

g. For heating greenhouses in order to shorten the kumara growing season.

11.2 In 1952 parliament enacted the Geothermal Steam Act 1952. Section 3 of that Act stated:

> Subject to the provisions of this Act, the sole right to take, use, and apply geothermal steam for the purpose of generating electricity shall vest in the Crown.

11.3 In 1953 the Geothermal Steam Act was repealed by parliament and replaced by the Geothermal Energy Act 1953. Section 3(1) of the Geothermal Energy Act 1953 stated:

> Notwithstanding anything to the contrary in any Act, or in any Crown grant or certificate of title or lease or other instrument of title in respect of any land within the territorial limits of New Zealand, the sole right to tap, take, use and apply geothermal energy on or under the land shall vest in the Crown, whether the land has been alienated from the Crown or not.

11.4 The intention of this legislation was to render private property rights, including Maori property rights, nugatory by requiring that all users of the resource require a permit from the Crown.

11.5 Section 10 of the said Act permitted the Crown to levy a resource rental for use of the Geothermal Resource.

11.6 The effect of section 3 of the Geothermal Energy Act 1953 is preserved by s354(1) of the Resource Management Act 1991.

11.7 The said legislation amounted to a confiscation of Ngati Hikairo's interests in geothermal resources, including but not limited to the Ketetahi hot springs, and is contrary to the purposes and principles of the Treaty of Waitangi.

12 Environmental Issues

12.1 The claimants say that their lands and resources including waahi tapu have been damaged, depleted and polluted by Crown land management practices, including indigenous forest deforestation, exotic afforestation, the use of 1080 poison, pollution and mismanagement.

12.2 Section 21 of the Water and Soil Conservation Act 1963 vested all development rights in respect of natural water in the Crown and abolished the doctrine of riparian rights. This provision, repeated in s354 of the Resource Management Act 1991, amounts to a confiscation of property rights by the state and is contrary to the provisions and principles of the Treaty of Waitangi.

12.3 The establishment of the Ruapehu Sewerage Treatment Plant is a further act against tikanga that by its very nature, will bring further misfortune to the Hapuu:

i. This plant, within 50 years, will poison the lifeblood of the land and its people, the waiora;

ii. The water of future generations will become contaminated and become waimate. The Mauri of the water will become contaminated.

12.4 Crown land management policies as implemented by the Department of Conservation and other agencies have prevented Ngati Hikairo from exercising their customary rights, including customary rights:

a. To gather Rongoa for healing from the Ngahere;

b. To harvest traditional foods such as the Pikopiko and Komata, and Kereru for the sustenance and good health of pregnant women, the elderly and the sick;

c. To use the feathers of the Kiwi and the Kereru for garments;

d. To be able to harvest and trade these foods as commodities with other hapuu;

e. To provide for the whaanau/hapuu and Manuhiri to the claimant's rohe;

f. To gather timber for the building of whare;

g. To practice religious practices within the realms of nga Atua Maaori according to Article Four of the Treaty of Waitangi;

h. Under tino rangatiratanga.

12.5 These customary rights of the claimants have become the right of the Department of Conservation to permit or license the claimants to do some, or part, or none of the practices as outlined.

12.6 The random airdropping of 1080 by Environment Waikato Regional Council and the Department of Conservation over the lands, forests, waterways homes, urupa, and Marae in the rohe of Ngaati Hikairo has had particularly adverse effects:

a. Rongoa could not be gathered where 1080 had been dropped because any rongoa made from this harvest caused further sickness of the patients;

b. Pikopiko, Komata and Puha could not be gathered where there was 1080 dropped for fear of poisoning whaanau/hapuu and on two occasions, Manuhiri attending tangihanga at the Marae;

c. The loss of stock from the whaanau/hapuu homes after they had eaten 1080 dropped on the land of the hapuu;

d. The stress, strain and poor and hindered health of the Great great great granddaughter of Te Huri Hokopakeke and Te Rangihiroa Pakaurangi, Natalie Albert, and her parents after she consumed a 1080 pellett at Taitaia Urupa while visiting her grandmother, Mary Te Rongopai Turner, a descendant of Te Rangihiroa, and first cousin of Te Huri Hokopakeke;

e. The poisoning of waiora through the leaching of randomly airdropped 1080 into the groundwater thereby poisoning the pure springwaters sourced from Tongariro and those streams and springs beneath Kakaramea, Pihanga, Maungatote and Tihia.

f. The claimants' tipuna worried for the future of their hapuu because the very nature of the Act would bring misfortune to the hapuu.

13 Rivers and Waterways

13.1 In 1903 the Crown enacted legislation which confiscated the beds of all navigable rivers *(Coal Mines Amendment Act 1903, now s 304 of the Resource Management Act 1991)*.

13.2 The effect of the said legislation is unclear in that:

a. The criterion of 'navigability' is nowhere clarified in the legislation and the case law on the point is conflicting; and

b. It is unclear what the implications of hydro-electric construction is for the criterion of 'navigability'.

13.3 This legislation, to the extent that it extinguished Ngati Hikairo title to riverbeds, was a seizure of private property and was contrary to the provisions and principles of the Treaty of Waitangi.

13.4 In other instances the Crown has claimed title to river beds on the basis of the *ad medium filum aquae* rule as riparian owner. To the extent that the Crown has purportedly acquired title to riverbeds, including the bed of the Rangitaiki and Wheao rivers, on this basis, such acquisition is contrary to the provisions and principles of the Treaty of Waitangi.

13.5 To the extent that marginal strips actually do exist along the banks of rivers, and to the extent that as a matter of law such strips do confer a title to the river bed on the Crown, such title is contrary to the provisions and principles of the Treaty of Waitangi.

Lake Rotoaira and Wairehu Stream

13.6 Lake Rotoaira ("the Lake") is within the rohe of, and is owned by, the claimants.

13.7 The Lake and its tributaries, including the Wairehu Stream, have been the life sustainer of Ngati Hikairo for approximately 600 years. During this time the claimants and their tipuna have relied on the Lake and stream as a customary food source.

13.8 The Wairehu Stream is the only natural feed into the Lake. On both sides of the Wairehu Stream, the land is Maori owned. Historically Maori pa were situated along the banks of the stream. Ngati Hikairo's dead and their parents' pito are also buried along its banks. For these reasons the Wairehu Stream and the Lake are of enormous cultural and spiritual importance to Ngati Hikairo.

13.9 Both the Lake and the Wairehu Stream are taonga of Ngati Hikairo and these taonga include not only the fish and the waters, but the activity of fishing and the right to take the fish according to Ngati Hikairo's local kawa.

13.10 In the 1900s the Crown proposed to introduce non-indigenous trout into various New Zealand waters, including the Lake. Large numbers of the Claimants' tipuna (including Taiaha Paurini and 137 others) petitioned the Crown against the introduction of trout into the Lake in 1905, however the trout were introduced nevertheless.

13.11 In 1926 a settlement over the ownership of Lake Taupo was signed between the Tuwharetoa Maori Trust Board and the Crown. This Agreement preserved rights to catch non-indigenous fish in a settlement with the Crown over the ownership of Lake Taupo. The 1926 agreement covered only Lake Taupo and its tributaries. It did not cover the Lake and its tributaries.

13.12 Ngati Hikairo's wish to preserve their customary rights to the Lake was recognised to a degree in 1938 when Parliament passed Section 22 of the Native Purposes Act. This provision gave Ngati Hikairo exclusive rights to both indigenous fish and trout from the Lake without the need to take out a license or pay any fee.

13.13 By 1959 these rights had been significantly eroded. In 1956 the Rotoaira Trust was created by the Maori Land Court to manage the Lake. The 1959

Maori Purposes Act provided that no person could fish for or take any fish from the Lake unless he was the holder of an entry permit granted by the trustees of the Rotoaira Trust authorising him to enter onto the lake for the purpose of fishing. In addition, in order to fish for trout a person was required to hold a trout fishing licence issued in respect of the Taupo trout fishing district.

13.14 These provisions have continued in slightly amended form to the present day Rotoaira Trout Fishing Regulations 1979 ("the Regulations"). The Regulations relate to the lake and immediate waters forming part of the Wairehu Canal (approximately 685 metres from the Lake to the first hurdle). They give the Trust the power to issue an entry permit to the lake. However it is only the holder of an entry permit and a trout fishing licence who is entitled to fish for trout. The Regulations also provide that no person may take any fish that is indigenous to New Zealand from the Lake (except under certain limited circumstances).

13.15 The current position is unclear, however it appears that where waters running from the Lake do not form part of it for the purposes of the Regulations, then they will be governed by only the Taupo Fishing Regulations 1984 and the Conservation Act 1987. Both of these Acts also place restrictions and conditions upon the fishing of non-indigenous fish and in particular trout. Where the various Regulations and Acts overlap over the Lake however it is unclear which provisions prevail.

13.16 As a result of the introduction of non-indigenous fish, the indigenous fish (Koaro) population in the Lake and its tributaries has seriously diminished, lessening the amount of indigenous fish available for Ngati Hikairo's traditional use. This has meant that the Claimants have been forced to catch introduced species (including trout) for their food. The legislation introduced by the Crown in placing restrictions on the taking of introduced species of fish (as well as indigenous fish) as set out above therefore seriously impinges upon Ngati Hikairo's customary fishing rights.

13.17 The Koaro population has been further severely depleted by the effects of the Tongariro Power Development Scheme.

13.18 Further, Crown legislation in relation to management and fishing rights in the Lake and its tributaries is confusing, ambiguous and appears contradictory at times. Both the legislation and its application by Crown officials seriously impinges on Ngati Hikairo's rights of rangatiratanga over their taonga katoa.

13.19 The various enactments by the Crown in relation to the Lake and its tributaries are of prejudicial effect to Ngati Hikairo in that they diminish or extinguish Ngati Hikairo's rights of customary ownership and use. In particular, the Crown has breached Ngati Hikairo's rights of rangatiratanga over the Lake and its tributaries and the taonga contained within them in the following ways:

a. the statutory establishment of the Rotoaira Trust and regulations governing the powers of the Trust with respect to the management of the Lake and its tributaries, which fails to have regard to Ngati Hikairo's traditional management structures and tikanga;

b. a failure to sufficiently protect Ngati Hikairo's rights of rangatiratanga over the Lake and its tributaries in the composition and establishment of the Trust with the result that Ngati Hikairo has been marginalised;

c. enacting legislation and regulations which impinge on and have the effect of extinguishing Maori customary fishing rights in relation to both indigenous and non-indigenous fish in the Lake and tributaries without permission from the tangata whenua or any form of consideration;

d. enacting legislation and regulations in relation to the management of the Lake and adjacent waterways and in relation to the fishing of indigenous and non-indigenous fish which contain conflicting provisions or which is otherwise contradictory and confusing.

Prosecution of Claimants for Exercise of Customary Rights

13.20 On 9 August 1998 two of the claimants, Bon Turner and Richard Isherwood, ("the Defendants") with a third person, had been gathering trout from the Wairehu Stream sufficient for food. The trout were gathered in accordance

with customary protocol in regard to such matters as the area they were gathered, the quantity taken and the size, and the Defendants had been given authority to fish by Ngati Hikairo.

13.21 While travelling away from the stream, the Defendants' vehicle was stopped by a Conservation officer and an Honorary Warranted Officer. The Defendants told the officers that they had taken the trout for food.

13.22 The officer seized the five trout and a landing net and the two Defendants were subsequently charged with offences under the Taupo Fishing Regulations 1984 and the Conservation Act 1987, including taking sports fish from prohibited water and taking sports fish where they were congregated for spawning.

13.23 At a hearing in the District Court at Taupo the Defendants raised the defence that the trout were taken in accordance with their customary fishing rights and customary protocol and accordingly were exempt from the prohibitions in the Regulations and the Conservation Act.

13.24 The Defendants were convicted and fined $750 each.

13.25 The Defendants' convictions on fisheries offences were as a result of the Crown's breach of its obligations under the Treaty of Waitangi to recognise and protect Maori customary fishing rights.

13.26 Both the Conservation Act and the Taupo Fishing Regulations are of prejudicial effect to Ngati Hikairo in terms of their rights of rangatiratanga over their fisheries, lakes and rivers, guaranteed under Article II of the Treaty.

13.27 If it is found that either or both of the Conservation Act and the Taupo Fishing Regulations (or any other legislation) do not extinguish Maori customary fishing rights, then the Crown has failed in its duty to actively protect those rights against the Crown's own officers, as follows:

a. The Crown charged and secured the conviction of the Defendants in the District Court on Fisheries charges for the reason that they did not comply with the licence system in circumstances where the Defendants were exercising customary fishing rights.

b. Ngati Hikairo did not consent to the introduction of trout into the Wairehu Stream.

c. Ngati Hikairo have never consented to the extinguishment of their customary fishing rights over the Wairehu Stream.

d. Ngati Hikairo were prejudiced by the release of non-indigenous fish into Lake Rotoaira and its streams, as it depleted their food source of indigenous fish species. Ngati Hikairo therefore has the right to fish for non-indigenous fish as a component of their customary fishing rights.

e. The Crown has imposed upon local Maori a licence system which breaches Maori customary fishing rights and rights of rangatiratanga over taonga as guaranteed by the Treaty of Waitangi.

14 Public Works

14.1 In breach of the Treaty principles of partnership, protection and good faith, without adequate consultation or compensation, the Crown took Ngati Hikairo lands under the various Public Works Acts.

14.2 The Crown has subsequently vested or transferred the same to local authorities without consultation.

Tongariro Power Development Scheme

14.3 The Crown took land under the Public Works Act for the Tongariro Power Development Scheme ("the TPD").

14.4 By Order in Council dated 29 October 1958, pursuant to section 311 of the Public Works Act 1928, the Minister of Electricity was authorized to construct and use works in connection with the utilisation of Water Power from the Whanganui, Tokaanu, Tongariro, Rangitikei and Whangaehu Rivers for the Generation of Electricity. This project became known as the Known as the Tongariro Power Development Scheme ("the TPD").

14.5 The Crown's implementation of the TPD gave no consideration to Maaori tikanga, and did not adequately consider the negative environmental, cultural and spiritual impacts of the scheme on Ngati Hikairo.

14.6 The establishment of the TPD has resulted in depletion of the indigenous fisheries of Ngati Hikairo, damage to wahi tapu of Ngati Hikairo, and spiritual harm and damage to the social structures of Ngati Hikairo.

14.7 The TPD severely depleted the population of the indigenous fish Koaro in Lake Rotoaira.

14.8 The Koaro was the main fishery during 1840 and up to the introduction of the Trout and the TPD in the 1900's. Nga Hapuu were renowned for their ability to "feed the people" at hui. The Koaro of Lake Rotoaira was an invaluable food source that meant survival or death to ngaa Hapuu living at the foothills of Tongariro.

14.9 Ngaa Hapuu traded this resource with other Hapuu in exchange for bird hunting rights and other resources of Ngaati Turumakina, Ngaati Turangitukua, Ngaati Kurauia, Ngaati Rongomai, Ngaati Pouroto of Ngaati Tuwharetoa and Hapuu of other Waka.

14.10 Ngaa Hapuu are now unable to provide or trade with others what was once bountiful, and to preserve their food for the long winter months to ensure the good health of the Hapuu. Ngaa Hapuu no longer enjoy good and long health as they did during and after 1840 until such time as legislation had removed their Tino rangatiratanga over their lands, forests and waterways.

14.11 Another major effect of the TPD was the alienation of Ngati Hikairo Whaanau from their Turangawaewae, causing the breakdown of the Whaanau/Hapu Structure.

14.12 Ngati Hikairo Whaanau homes and urupa were relocated to other lands in the rohe in order that the blasting of Huimako (a wahi tapu/urupa) could take place:

a. The Wharepuni, (Rangikapuia), and the Wharekai of Taitaia were required to be relocated to Papakai;

b. People of Ngati Hikairo were required to vacate their homes; and

c. The remains of Ngati Hikairo ancestors interred in the urupa at Huimako were required to be relocated in order that the blasting could take place.

14.13 The metal from Huimako was used to metal the roads developed for the Tongariro Power Development Scheme.

14.14 The men o ngaa hapuu were issued letters that in order for them to retain employment with the Ministry of Works and Development and the TPD, they had to accept the housing provided in the Turangi Township. This caused further breakdown of the whaanau/hapuu structure.

14.15 Before the TPD, the Marae Community was a thriving, happy and loving environment to be raised in. The Marae are now places to gather on occasion.

14.16 Further, the mixing of the Mauri of all the different waters as part of the TPD has and will cause contamination and bring misfortune and possible death to the hapuu.

14.17 The Crown has failed to provide an opportunity for Ngati Hikairo to participate in the management of, and to directly benefit from, the TPD scheme which utilizes the natural resources of Ngati Hikairo.

15 Social Impacts

Failure to Recognise Whaangai

15.1 The great grandson of Te Huri, Waaka Te Waaka aka Papa Waaka aka Papa Waaka Konui became whangai to Te Waaka Reupena, aka Waaka Wairehu, the grandson of Te Huri Hokopakeke.

15.2 Waaka Te Waaka was born in 1907. The 1909 Adoption Act did not recognise the customary laws associated with the tikanga of Whaangai.

15.3 After the death of Te Waaka Reupena aka Waaka Wairehu, Waaka Te Waaka was ousted from the home of his whangai at Otukou Marae by his birth parents and his brothers. He and his family were forever ridiculed and told they did not belong.

15.4 The descendants of Waaka to Waaka have been treated as "leppers" by their birth family. On several occasions, the descendants have been told that they do not belong, that they are pohara, that they have nothing and they will always have nothing. The claimants are always made to feel unwelcome at

their own marae because Waaka Te Waaka was raised as the Son of Te Waaka Reupena aka Waaka Wairehu.

15.5 The claimants' ability to manaaki their whaanau/hapu and manuhiri has been prejudicially hindered.

15.6 This Act has been the cause of hatred and animosity towards the family of Waaka Te Waaka from his siblings and their siblings to today.

Tohunga Suppression Act

15.7 The 1907 Tohunga Suppression Act criminalized tohunga and was inconsistent with Article 2 and Article 4 of the Treaty of Waitangi.

15.8 This Act removed the knowledge base of the Hapuu regarding:

a. Whakapapa to all life animate and inanimate;

b. Whakapapa to ngaa Atua Maaori;

c. Whakapapa to whenua, forests, waterways that also includes all flora and fauna;

d. Knowledge of positive affirmations (Karakia);

e. Whakapapa to neighbouring hapuu and hapuu from other waka;

f. Knowledge of rongoa for healing of the physical self;

g. Knowledge for healing of the spiritual and mental self;

h. Knowledge of how to survive in extreme conditions;

i. Knowledge of successful intercommunal relationships;

j. Knowledge of aroha, manaakitanga, pono, whakapono;

15.9 This Act and continued Crown education policies of assimilation have resulted in the loss of tikanga, kawa and te reo.

D BREACHES OF THE TREATY AND PREJUDICE

16 Treaty Breaches

16.1 The Crown acted in breach of the principles of the Treaty in that it:

a. failed to actively protect the interests of Ngati Hikairo guaranteed by the Treaty to the fullest extent reasonably practicable and failed to take steps to ensure they were not placed in a position injurious to their interests. As a consequence Ngati Hikairo were left without sufficient land and resources for their present and future needs.

b. failed to protect Ngati Hikairo's land tenure and relationships with other hapu, customary laws, and the integrity of their life and culture and failed to actively protect Ngati Hikairo's rights and interests in land and other taonga.

c. failed to take action to actively protect the claimants and provide a remedy when as a result of the Crown's actions and omissions as described the prejudice which followed became apparent;

d. failed to act honourably, reasonably and on the basis of justice, sincerity and utmost good faith. The Crown took intentional and purposive steps to undermine Ngati Hikairo's rangatiratanga, treat them in a prejudicial manner and acquire their resources for its own benefit.

e. failed to exercise its powers and responsibilities of government, including the application of the law, properly and justly, without any underlying desire of benefit, and without unfair discrimination between its pakeha and Maori subjects.

f. failed to accord to Ngati Hikairo the rights and protection guaranteed to them as British citizens, and further that the Crown deliberately took illegal action in breach of the common law and constitutional principles of British law to suppress those rights. It is submitted that the evidence has shown that it did so to further the interests of itself and a segment of its population (European settlers) and the interests of its own executive agents.

17 Prejudice to the Claimants

17.1 The actions and omissions of the Crown as particularised in this Statement of Claim and the Crown's subsequent actions and omissions as described above resulted in the social and economic destabilisation of Ngati Hikairo and as a result Ngati Hikairo have suffered prejudice and consequent loss.

17.2 This prejudice included:

a. Damage to the social structures of the people;

b. Damage to the cultural taonga and traditions of the people;

c. Disruption of the existing tenurial regime based on Maori customary law;

d. Poverty, destruction of the economic base of the people, and economic marginalisation;

e. Poor health, sickness, and high mortality;

f. Injury to mana, distress, humiliation and financial penalty through the imposition of criminal charges put in place by officers of the Crown as a result of the people exercising their customary rights;

g. Undermining of the political and cultural relationships of the people;

h. Damage to the physical environment in which Ngati Hikairo had lived for hundreds of years.

17.3 These social and economic difficulties were a direct and indirect result of Crown confiscation, purchasing and the operations of the Native Land Court and other Crown actions in the preceding and contemporary periods.

17.4 The effects of the Crown intervention were the destruction of traditional leadership, the rights and ability to exercise rangatiratanga, the disruption of traditional balances of power in the area, dislocation of social relationships between hapu and whanau, and the creation of intra hapu and whanau tensions and disputes.

17.5 As a consequence of large scale acquisition of their lands as particularised above, Ngati Hikairo was dispossessed of their economic and sustaining resources, including the land, mahinga kai, birding, cultivation, gathering and fishing resources.

17.6 As a result of Crown intervention Ngati Hikairo were dislocated from their traditional lands, waahi tapu, and resources and as a consequence destabilised their traditional patterns of resource use, economic structures and societies and were hampered and/or prevented from economic utilisation and development of their remaining resources.

17.7 As a result of the Crown's failure to carry out its duty of active protection Ngati Hikairo were oppressed by poor health, poverty and population decline. This poor health and general poverty were a principal cause of further land alienation in the region.

E RELIEF

18 Apologies

18.1 The Claimants, wishing to achieve the removal of the prejudice inflicted upon Ngati Hikairo by the Crown, seek recommendations from the Waitangi Tribunal that the Crown make a full and comprehensive public apology for those actions and omissions that were in breach of the provisions and principles of the Treaty of Waitangi.

19 Extinguishment of Convictions and Recognition of Customary Rights

19.1 The Claimants seek recommendations from the Tribunal that:

19.2 The convictions for the Fisheries offences outlined in section 13 above be extinguished.

19.3 The tino rangatiratanga of the claimants associated with their customary fisheries be fully recognised and protected, and in particular, that the Crown recognise that Maori from hapu or iwi having customary fishing rights in a river or lake have the right to fish for trout without a licence, provided:

a. They do so according to the terms and conditions of local kawa and are able to prove they are properly authorised to do so;

b. The fishing is for personal/family consumption or for hui/tangi and the like; and

c. that the fishing does not impinge on the conservation and sustainability of the trout reserve.

19.4 That this recognition is explicitly recognised and provided for by statute.

20 Return of Land and Taonga

20.1 The Claimants seek recommendations from the Tribunal that:

20.2 Pursuant to Sections 8A-8H(j) of the Treaty of Waitangi Act 1975 the Crown should return to the Claimants in a manner which appropriately recognises those hapu/whanau that have a direct interest in the land all relevant Crown land, together with any improvements thereon, including:

a. Reserved land and conservation land, including but not limited to Mount Tongariro, Mount Pihanga, Lake Rotoaira and the Ketetahi hot springs;

b. Land held by any State Owned Enterprise, including but not limited to the portion of the Taurewa Farm that lies east of the Whakapapanui River;

c. Land held by any institution under the Education Act 1989; and

d. Land vested under the New Zealand Railway Corporation Restructuring Act 1990 or any interest in any such land and together with improvements thereon.

20.3 Pursuant to Section 36 of the Crown Forest Assets Act 1989 the Tribunal recommend that the Crown:

a. return all of the land comprised within the Crown Forests to hapu ownership, including but not limited to the Tongariro and Taurewa forests;

b. pays compensation in accordance with the First Schedule of the Crown Forest Assets Act 1989; and

c. make such other remedies as the Tribunal considers appropriate.

20.4 Pursuant to Section 8A(2) of the Treaty of Waitangi Act 1975, the Tribunal make a binding recommendation that land within Schedule 1 subject to resumption provisions under the State Owned Enterprises (Treaty of Waitangi) Act 1988 be returned to the claimants.

20.5 The return of all taonga located during the Tongariro Power Development Scheme within the rohe of Ngati Hikairo.

20.6 The return of all taonga presented to the Government in Wellington, and taken to the Department of Conservation since 1987.

20.7 The return and revesting of the Crown owned water bodies within the block (including the bed, banks, and water in, under and adjacent to such water bodies) in the relevant hapu.

21 Compensation

21.1 The Claimants seek recommendations from the Tribunal that:

21.2 Pursuant to Section 6(3) of the Treaty of Waitangi Act 1975 the Tribunal recommend the Crown:

a. Compensate the Claimants for the prejudicial effects caused by the Crown's legislation, actions, omissions, policies and practices as identified in this Statement of Claim;

b. Compensate the claimants in respect of the disruption of the hapu and whanau; the social dislocation which has occurred as a consequence of legislation and government policy; and for the taking of measures dealing in social issues of unemployment and loss of mana; and for compensation by way of policies, practices and funding appropriate to restore the mana of the tribes; education and training of tribal members;

c. Compensation for the logs and other natural resources that have been removed by the Crown or enabled by the Crown to be removed from the Tongariro or Taurewa Forest;

d. Compensate the descendants of Waaka te Waaka for the loss of their economic base, the loss of mana, the ridicule that they have had to suffer even today, four generations later and the loss of enjoyment of their birth families that they would have otherwise enjoyed; and

e. make such other remedies as the Tribunal considers appropriate.

21.3 Compensation to be paid to the Claimants for the loss of their economic base and lands including accrued loss of earnings.

21.4 Compensation for all costs involved in relation to endeavours by the claimant's ancestors to recover possession of the lands claimed.

21.5 Compensate the claimants for the costs and penalties associated with the convictions detailed in section 13 above.

21.6 Compensation in respect of the Tongariro Power Development Scheme:

a. A recommendation that 33 percent of the gross returns of Genesis (from water that passes through Lake Rotoaira), be allocated to the Hapuu on an annual basis for the loss of the koaro.

b. A recommendation that the Hapuu be allocated shares from Te Ohu Kai Moana for the significant loss of this commodity to the Hapuu.

c. A recommendation that Genesis be made responsible to ensure the preservation of any Koaro that may be present in Lake Rotoaira through a restoration programme in conjunction with the Hapuu and at the cost of Genesis.

d. A recommendation that Genesis restore any wahi tapu that may have been damaged through the Tongariro Power Development Scheme in conjunction with the Hapuu at the cost of Genesis.

e. A recommendation that Genesis mitigate all environmental damage to Lake Rotoaira as ongoing maintenance in conjunction with the Hapuu and at the cost of Genesis on a yearly basis.

21.7 Compensate Ngati Hikairo for the full costs of the preparation and presentation of this claim and the costs of recovering any land recommended to be returned or other costs incurred in securing the implementation of recommendations.

22 Cultural redress

22.1 The Claimants seek recommendations from the Tribunal that:

a. The mātauranga and traditional knowledge base of the claimants associated with their rongoa and other taonga be fully recognised and protected as the cultural and intellectual property rights of the appropriate whanau and hapu, including:

i. A recommendation that a Wananga be funded by the Crown for the hapuu to renew their ties with *their* whakapapa and all the knowledge that comes with this learning including to reo and history.

b. The Crown assist and facilitate restoration of access to mahinga kai and to other forms of traditional food resources of importance to the claimant whanau and hapu.

c. The Crown make provision for the participation of Ngati Hikairo on all statutory boards, authorities, agencies, companies and other Crown organisations that function within the claim area, including:

i. Members of the Hapuu be employed as Kaitiaki alongside the Department of Conservation, Environment Waikato and any other Crown Agencies relevant to the resources of the hapuu that includes lands, waterways, forests, and flora and fauna in the ownership or management of such Agencies.

d. Provide statutory, regulatory and other appropriate mechanisms and resources to enable tribal self regulation and governance for Ngati Hikairo within their tribal domain.

e. The Crown admit Waaka to Waaka as Tamaiti Whangai of Te Waaka Reupena aka Waaka Wairehu and his wife Ruia Ngaumu and correct the Maori Land Courts accordingly.

22.2 The Claimants seek any other recommendations the Tribunal thinks fit.

23 Amendment

23.1 Ngati Hikairo reserve the right to amend or add further to the claim as appropriate.

This document is filed by **Deborah Anne Edmunds** solicitor for the claimants, of the firm of Kensington Swan, Wellington. The address for service of the claimants is 89 The Terrace, Wellington.

Documents for service on the plaintiff may be left at that address for service, or may be –

- Posted to the solicitor at c/- Kensington Swan, PO Box 10 246, Wellington;
- Left for the solicitor at a document exchange for direction to c/- Kensington Swan, DX SP 26517, Wellington; or
- Transmitted by facsimile to 04 472 2291, provided that they are clearly marked for the attention of the solicitor and that a confirmation copy is forthwith sent by ordinary post or document exchange.