OFFICIAL

IN THE WAITANGI TRIBUNAL

PORIRUA KI MANAWATU INQUIRY
TE ROHE POTAE INQUIRY

IN THE MATTER	of Te Tiriti o Waitangi Act 1975
AND	
IN THE MATTER	of the Porirua ki Manawatu Inquiry (Wai 2200)
AND	
IN THE MATTER	of the Te Rohe Potae Inquiry (Wai 898)
AND	
IN THE MATTER	of a claim by Edward Penetito and others on behalf of themselves and the Kauwhata Treaty Claims Komiti and Nga Uri Tangata o Ngati Kauwhata ki Te Tonga (Wai 972)

AMENDED STATEMENT OF CLAIM

Dated: this 21st day of January 2011

RECEIVED
Waitangi Tribunal
21 JAN 2011
Ministry of Justice
WELLINGTON

Rainey Collins
Solicitors
Level 16, HP Tower
163 Featherston Street
WELLINGTON 6140

PO Box 689
DX: SP20010

Telephone (04) 473 6850
Facsimile (04) 473 9304

Counsel: B D Gilling/ J M Sarich / R M Sandri

MAY IT PLEASE THE TRIBUNAL

1. **The Claimants**

1.1 This amended Statement of Claim is filed on behalf of the Wai 972 claimants Edward Penetito and others on behalf of themselves and the Kauwhata Treaty Claims Komiti and Nga Uri Tangata o Ngati Kauwhata ki Te Tonga ("the Claimants").

1.2 This Amended Statement of Claim amends the earlier Statement of Claim filed by the Claimants in the Waitangi Tribunal and registered as Wai 972.

The Claimants by their solicitor say:

1.3 The Claimants are all descendants from the eponymous ancestor Kauwhata, the founding ancestor of Ngati Kauwhata, a Tainui people.

1.4 Ngati Kauwhata was a distinct people from ancient times, numbering 800-1,000 fighting men.[1]

1.5 Ngati Kauwhata exercised, and continues to exercise mana and tino rangatiratanga over its ancestral lands. No other group could speak or make decisions for Ngati Kauwhata without first being authorised by Ngati Kauwhata to do so.

1.6 Ngati Kauwhata operated its affairs independently from other iwi and hapu in accordance with tikanga and occupied lands within its rohe.

1.7 As at 1840, Ngati Kauwhata exercised mana and tino rangatiratanga over the Ngati Kauwhata rohe.

1.8 Ngati Kauwhata rohe includes core lands within:

[1] Tapa Te Whata, evidence Ngatikauwhata Claims Commission. 1881 AJHR G-2a, 8

(a) The Waikato-Raukawa Inquiry District;

(b) Te Rohe Potae Inquiry District;

(c) The Waikato-Tainui Inquiry District;

(d) The Porirua ki Manawatu Inquiry District; and

(e) The Rangipo ki Rangitikei Inquiry District.

2. **Te Tiriti o Waitangi**

2.1 By Te Tiriti o Waitangi, the Crown:

(a) Confirmed and guaranteed to Ngati Kauwhata tino rangatiratanga including the full, exclusive and undisturbed possession of their lands, estates, waterways, forests, fisheries, other properties, rivers, waterways and taonga;

(b) Promised to protect their rights guaranteed by Te Tiriti and perform their obligations arising out of Te Tiriti; and

(c) Extended to Ngati Kauwhata all the rights and privileges of British subjects.

3. **Principles of Te Tiriti o Waitangi**

3.1 The Crown had and continues to have duties to recognise and actively protect Maori rights and interests under Te Tiriti and its principles.

3.2 As a consequence of Te Tiriti, the Crown was and is generally required to:

(a) Ensure Ngati Kauwhata retain their lands, estates, forests, fisheries, other properties and taonga for as long as it is the desire of the Claimants to do so;

(b) Recognise and protect the lore, customs, cultural and spiritual heritage of the Claimants;

(c) Recognise and protect Ngati Kauwhata's tino rangatiratanga;

(d) Ensure Ngati Kauwhata exercise tino rangatiratanga, including the right to posses, manage and control all of their property and resources in accordance with Ngati Kauwhata lore, cultural preferences and customs;

(e) Ensure Ngati Kauwhata were provided with the means to develop, exploit and manage their resources in a manner consistent with Ngati Kauwhata's cultural preferences; and

(f) Ensure that the impact upon Ngati Kauwhata from Government action and regulations is consistent with Te Tiriti and its principles and actively protect Maori, and in particular, Ngati Kauwhata's rangatira, customs, law and properties.

3.3 The Principles of Te Tiriti include its terms.

4. **Te Tiriti o Waitangi and UNDRIP**

4.1 In April 2010, the Crown formally supported the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

4.2 Therefore, as a living document, Te Tiriti should also be interpreted in light of the provisions of UNDRIP.

5. **Te Rohe Potae and Waikato-Raukawa rohe**

5.1 Within Te Rohe Potae and Waikato-Raukawa areas the Ngati Kauwhata rohe extends from Pukekura/Maungatautari district, across the Puniu River towards Otorohonga (the Northern rohe).

Ngati Kauwhata have specific interests in Native Land Court blocks within this area including:

Te Rohe Potae Inquiry District

(a) Wharepuhunga

Waikato-Raukawa Inquiry District

(b) Pukekura;

(c) Puahue/Puahoe;

(d) Ngamoko No. 2;

(e) Whanake; and

(f) Maungatautari Nos 1 and 2.

5.2 Pukekura was a central block to Ngati Kauwhata. It was located along the edge of the confiscated land south of the Waikato river.[2]

5.3 Puhue/Puahoe adjoined Pukekura and also ran along the edge of the confiscated land.

5.4 Ngamoko No. 2 remains un-located. This block was associated with Pukekura and Puahue/Puahoe.

5.5 Whanake also remains unlocated.

5.6 The Maungatautari blocks runs along the southern side of the Mangatautari maunga and adjoins these three blocks.

5.7 Ngati Kauwhata maintained its traditional interests in Pukekura, Puahoe/Puahue, Ngamoko No. 2, Whanake, and Maungatautari blocks through:

[2] See Boundary Discussion Paper (Wai 898 #6.2.2) Fig 10 p 27

(a) Some Ngati Kauwhata members remaining behind to maintain the ahi kaa on the land for the whole tribe after other members of Ngati Kauwhata journeyed south on the Tainui heke of the early 1830's;

(b) Some members in the Northern rohe holding the lands in trust for those who left;

(c) Members in the south returning often upon invitation from those in the Northern rohe, either permanently or to visit;[3]

(d) Members asserting Ngati Kauwhata rights before the Native Land Court and Royal Commissions in the nineteenth century; and

(e) Maintaining some ongoing land interests in the district.

5.8 ***The Claim***

Native Land Court

5.8.1 The Crown, in breach of its Treaty obligations, introduced the Native Land Court system that failed to recognise customary interests of Ngati Kauwhata over their traditional lands at Wharepuhunga, Pukekura, Puahue/Puahoe, Ngamoko No. 2, Whanake, and Maungatautari.

5.8.2 The Crown enabled the Native Land Court to investigate the title to land in circumstances where owners were unable to attend, resulting in their lands being awarded to others.

5.8.3 The Crown failed to adequately respond to the opposition of Ngati Kauwhata to the operations of the Native Land Court.

[3] 1881 AJHR G-2A; 1885 AJHR G-3, 4

5.8.4 The Native Land Court system undermined collective management of the land in accordance with Ngati Kauwhata custom, and resulted in the fragmentation and alienation of much of Ngati Kauwhata's remaining land in the Waikato-Raukawa and Te Rohe Potae areas.

5.8.5 The Native Land Court system imposed heavy costs and court fees upon Ngati Kauwhata, resulting in further alienation of their land in the Waikato-Raukawa and Te Rohe Potae areas.

5.8.6 Ngati Kauwhata were also forced to relocate themselves for hearings, burdening them further with substantial food and accommodation costs.

Particulars

5.8.7 The Native Land Court sat in 1868 to investigate customary ownership of those blocks in which Ngati Kauwhata had an interest that were within neither the aukati area nor the raupatu area. These blocks were:

(a) Pukekura;

(b) Puahue/Puahoe;

(c) Ngamoko No. 2; and

(d) Parts of Maungatautari.

5.8.8 Simultaneously, the Court also sat at Rangitikei where Ngati Kauwhata's other lands are located.

5.8.9 Ngati Kauwhata sought Crown advice, and were told to remain in Rangitikei and that the Waikato Native Land Court hearing would be postponed.

5.8.10 The Waikato Court proceeded nonetheless, and Ngati Kauwhata were not present to defend their interests.

5.8.11 A protest was registered on behalf of Ngati Kauwhata, but otherwise their claims were ignored.

5.8.12 As a result, legal title to their land was awarded to others.

5.8.13 As a result of an 1877 Ngati Kauwhata petition to Parliament, in 1881 the Ngati Kauwhata Claims Commission ("the 1881 Commission") sat to inquire into whether Kauwhata had land interests in the Waikato region.

5.8.14 Ngati Kauwhata witnesses told the 1881 Commission that:

(a) Potatau Te Wherowhero had invited them to "return to Maungatautari and Ranigiaohia – their own lands," and that Ngati Kauwhata had consented.[4]

(b) They were a distinct people from Ngati Raukawa. [5]

5.8.15 Despite this evidence, the Commission found that:

(a) Prior to 1840, Ngati Kauwhata had lost all their right, title and interest to Maungatautari Nos 1 and 2, Pukekura, Puahoe, and Ngamoko No 2;

(b) Up to the Native Land Court hearing in 1868 those rights had not been restored;

(c) They were properly represented by an agent before the Native Land Court; and

(d) That they were not entitled to any compensation.[6]

---

[4] Angela Ballara, Iwi, 156
[5] 1881 AJHR G-2A, 19
[6] 1881 AJHR G-2A, 5

5.8.16 The Commission chose to ignore the evidence of Ngati Kauwhata, instead asking for, receiving, and acting upon the instructions of the relevant Crown Minister.

5.8.17 Ngati Kauwhata's traditional occupation of the Maungatautari district was acknowledged by the Native Land Court in the nineteenth century. For example, in its judgment on the Maungatautari case in September 1884, the Court noted:[7]

> *It is admitted on all sides that Ngatiraukawa and Ngatikauwhata were the owners of Maungatautari.*

5.8.18 Nevertheless, Ngati Kauwhata were barred in the late nineteenth century from their ancestral lands both at Maungatautari and in neighbouring blocks by the Native Land Court and its application of its understanding of take raupatu.[8]

5.8.19 The operation of the Court was vigorously challenged by the people of Ngati Kauwhata, who have never accepted the correctness of these judgments.

5.8.20 In their attempts to gain Crown recognition of their traditional rights, the people of Ngati Kauwhata:

(a) Argued, in the Maungatautari district, that neighbouring blocks including Wharepuhunga "are really one with Maungatautari".[9]

(b) Were forced to travel great distances to attend meetings convened by the Crown in the Waikato. The burden of such travel resulted in extensive social and economic repercussions for Ngati Kauwhata.

---

[7] 1885 AJHR G-3, 4

[8] See, for example, 1885 AJHR G-3, 6 where the Court found that claims by ancestry by Ngati Kauwhata and others to Maungatautari were extinguished by take raupatu despite, for example, the people remaining, the close whakapapa links between groups such as Ngati Haua and Ngati Kauwhata, and the "conquest" having taken place only in the 1830s

[9] 1905 AJHR G-1, 8

Crown Purchasing

5.8.21 The Crown, in breach of its Treaty of Waitangi obligations, adopted unfair purchasing practices to acquire land from Ngati Kauwhata in the Waikato-Raukawa and Te Rohe Potae regions.

5.8.22 The Crown, in breach of its duties, gave itself monopoly purchasing powers under legislation and used such powers to acquire land from Ngati Kauwhata in Te Rohe Potae and Waikato-Raukawa areas.

5.8.23 In Te Rohe Potae and Waikato-Raukawa areas, the Crown failed to:

(a) Ascertain the nature of Ngati Kauwhata customary rights in the land it intended to purchase; and

(b) Deal with Ngati Kauwhata right-holders according to their customary interests.

5.8.24 The Crown pressured Ngati Kauwhata who were fortunate enough to be awarded interests into selling their land in Te Rohe Potae and Waikato-Raukawa to the Crown at minimal prices.

5.8.25 The Crown encouraged debts and costs on lands in Ngati Kauwhata's Northern rohe in order to push Ngati Kauwhata owners to sell their lands.

5.8.26 The Crown failed to ensure that adequate restrictions were placed on the alienation of land to protect Ngati Kauwhata from significant land loss in Te Rohe Potae and Waikato-Raukawa areas.

5.8.27 In Te Rohe Potae and Waikato-Raukawa areas, the Crown failed to either:

(a) consult with Ngati Kauwhata over the location of reserves; or

(b) set aside adequate reserves for their present and future needs.

5.8.28 The Crown failed to respond appropriately to opposition to Crown purchasing by members of Ngati Kauwhata in Te Rohe Potae and Waikato-Raukawa areas.

Particulars

5.8.29 The Crown carried out secret purchasing of individual interests in the Ngati Kauwhata rohe.[10] This allowed the Crown to deal only with those individuals who were willing to sell and undermined the ability of whanau, hapu and iwi to make collective decisions concerning the land.

5.8.30 The Crown made advance payments to Maori landowners in the Ngati Kauwhata rohe before lands had been through the Native Land Court and correct owners and interests identified.[11]

5.8.31 The Crown made payments to individuals in exchange for their assistance in securing the purchase of lands in the Ngati Kauwhata rohe.[12] For example, they would pay more to one party for their share under the condition that these people would subsequently work to convince other hapu members to sell.[13]

---

[10] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920'*, Working Paper, Rangahaua Whanui Series, December 1996, p 112

[11] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920'*, Working Paper, Rangahaua Whanui Series, December 1996, p 114-115

[12] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920'*, Working Paper, Rangahaua Whanui Series, December 1996, p 114-116

[13] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920'*, Working Paper, Rangahaua Whanui Series, December 1996, p 114-116,119

5.8.32 The Crown negotiated with Europeans married to Maori landowners to bring land within the Ngati Kauwhata rohe before the Native Land Court, specifically for alienation.[14]

5.8.33 The Crown did not make any effort to ascertain which owners may have had traditional rights to lands in the Ngati Kauwhata rohe and purchase only from those owners.

5.8.34 In February 1891 one of the principal owners in the Wharepuhunga block wrote to the Crown to inform them that many of those who had signed the Crown purchase deed did not have traditional title to the Wharepuhunga block.

5.8.35 The Crown did not investigate the allegations made in this letter and took no steps to protect the interests of Ngati Kauwhata owners with genuine rights to lands in the block. [15]

5.8.36 The Crown enacted the Native Land Alienation Restriction Act 1884 which effectively gave itself a right of pre-emption over lands within the Ngati Kauwhata Northern rohe. This effective monopoly over purchasing meant the Crown could control the purchase price for lands within the Ngati Kauwhata Northern rohe.

5.8.37 The Crown deliberately set out to purchase Ngati Kauwhata interests in the Wharepuhunga block as cheaply as possible, in order to protect its own interests.[16]

5.8.38 The Crown pursued purchasing in the block despite the ongoing objections of the Maori owners of lands in the block, including Ngati Kauwhata, to the purchase of the lands and the way in

---

[14] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920*, Working Paper, Rangahaua Whanui Series, December 1996, p 114

[15] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920*, Working Paper, Rangahaua Whanui Series, December 1996, p 113-114

[16] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920*, Working Paper, Rangahaua Whanui Series, December 1996, p 112

which the purchases were carried out.[17] These objections were expressed in a number of ways:

(a) Verbally at hui between the Crown and the Maori owners in the block;

(b) Letters to the Crown raising concerns with purchasing practices in the block; and

(c) In requests made to place the land under restriction according to the Native Lands Fraud Prevention Act 1881 to protect it from sale.

5.8.39 Immediately after partition of the Wharepuhunga block, the Crown began purchasing in the Wharephunga 2 block which had been set aside for non-sellers.[18]

5.8.40 The Crown determined the location of seller reserves in the Wharepuhunga 1 block. Any requests from Ngati Kauwhata sellers as to their preferred location were resisted if they appeared to interfere with Crown interests.[19]

5.8.41 The Crown failed to set aside seller reserves from the Wharepuhunga 2 block.[20]

Public Works

5.8.42 The Crown, in breach of its duties, introduced and operated a Public Works regime which allowed land and resources to be compulsorily taken from Ngati Kauwhata in the Waikato-Raukawa

---

[17] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920*, Working Paper, Rangahaua Whanui Series, December 1996, p 112

[18] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920*, Working Paper, Rangahaua Whanui Series, December 1996, p 120

[19] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920*, Working Paper, Rangahaua Whanui Series, December 1996, p 121

[20] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840 – 1920*, Working Paper, Rangahaua Whanui Series, December 1996, p 120

and Te Rohe Potae areas for public works without compensation and without any or adequate consultation.

Vested Lands

5.8.43 The Crown, in breach of its duties, implemented a vested lands scheme which deprived Ngati Kauwhata of ultimate control of the vested lands in the Waikato-Raukawa and Te Rohe Potae areas without adequate consultation.[21]

Consolidation and Development Schemes

5.8.44 The Crown, in breach of its duties, introduced consolidation and land development schemes in the Waikato Raukawa and Te Rohe Potae areas without adequate, if any, consultation with Ngati Kauwhata.[22]

5.8.45 The Crown received awards of Ngati Kauwhata's land in the Waikato-Raukawa and Te Rohe Potae areas in payment of various costs as a preliminary to consolidation.[23]

5.8.46 The Crown failed to:

(a) adequately consult with Ngati Kauwhata about the administration of the land development schemes; or

(b) respond adequately to complaints by Ngati Kauwhata about the administration of land development schemes.[24]

5.8.47 The Crown failed to ensure that the land development schemes were adequately resourced and properly administered. As a

---

[21] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) Part 2: 1900-1960'*, Rangahaua Whanui Series, August 1999, p109

[22] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) Part 2: 1900-1960'*, Rangahaua Whanui Series, August 1999, pp 103-109

[23] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) Part 2: 1900-1960'*, Rangahaua Whanui Series, August 1999, pp 103-109

[24] Cathy Marr, *'The Alienation of Maori Land in the Rohe Potae (Aotea Block) Part 2: 1900-1960'*, Rangahaua Whanui Series, August 1999, pp 111-116

result, Ngati Kauwhata's land included in the development schemes became encumbered with significant debts.[25]

Maori Land Development

5.8.48 The Crown, in breach of its duty of active protection, failed to assist Ngati Kauwhata to develop and administer their lands and resources in the Waikato-Raukawa and Te Rohe Potae areas to the fullest extent practicable.

Rating

5.8.49 The Crown, in breach of its duties, adopted, without consultation or consent, a policy of applying rates to Ngati Kauwhata land in the Waikato-Raukawa and Rohe Potae areas, placing pressure on owners and in some cases resulting in charging orders and further alienation of Ngati Kauwhata land and hindering economic development.

Sufficiency of Land

5.8.50 The Crown, in breach of its Treaty of Waitangi obligations, failed to ensure the Claimants retained sufficient lands in the Waikato-Raukawa and Te Rohe Potae areas for their present and future needs.

5.9 ***Prejudice as a Result of the Crown's Acts and Omissions***

5.9.1 Ngati Kauwhata has also been, and continue to be, prejudicially affected in the Waikato-Raukawa/Te Rohe Potae/Waikato-Tainui areas in that:

(a) Ngati Kauwhata are now without significant lands and resources to be held in accordance with their law and customs; and

---

[25] Dr Vincent O'Malley, *King Country (Wai 898): A Review of Casebook Research Requirements*, December 2006, (Wai 898 #6.2.1), p 70

(b) Many Ngati Kauwhata have now been dispossessed from their northern rohe.

6. **Waikato-Tainui rohe**

6.1 Ngati Kauwhata also has interests in the Waikato-Tainui Raupatu area, particularly in Rangiaohia.

6.2 ***The Claim***

Raupatu

6.2.1 The Crown, in breach of its duties, confiscated the lands of Ngati Kauwhata at Rangiaohia for "rebellion against her Majesty's authority".

Particulars

6.2.2 The Crown implemented the New Zealand Settlements Act 1863 to enable land of Maori who had been "engaged in rebellion against Her Majesty's authority" to be confiscated and set apart for settlement.

6.2.3 Ngati Kauwhata land in the Rangiaohia area was proclaimed under the New Zealand Settlements Act in 1865.

6.2.4 In 1865, a Compensation Court was established to award compensation to 'loyal' or neutral Maori.

7. Porirua ki Manawatu and its rohe

7.1 The Ngati Kauwhata rohe includes core lands within the Wai 2200 (Porirua ki Manawatu) Inquiry District.

7.2 Within the Wai 2200 Inquiry District the Ngati Kauwhata rohe is as follows:[26]

> *"The boundary commences at Whitirea, in the region of Manawatu, thence by way of sea to Atatuhi to Otupere; the boundary turns off there and goes to Kaikokopu, thence to Kakukuera, Omanuka, Puketotara, Te Kawau, Totarataepa, Kopaupokoro Te Pua, Whakamoetakapu, Paeroa, Papauku; there is strikes off, goes to Umutoi on the Oroua, Te Awahuri, thence following the course of the Oroua to Puketotara, meeting the formed boundary at Whitirea"*

7.3 Tapa Te Whata also gave evidence before the Native Land Court at Otaki regarding the customary agreements in the Rangitikei-Manawatu region:[27]

> *"Came with Te Whatanui at the great Heke. The Heke started from Maungatautari and came to Taupo thence to the upper Turakina. From Turakina (Ka wehewehea nga huarahi). The Ngati Raukawa went out to the sea, beach and we the Ngati Kauwhata and Ngati Huia came across inland through the back to Rangitikei, and Te Auturoa was the chief of Ngati Huia. I came with Ngati Kauwhata; we came down the Rangitikei on the north side. Stayed at Paeroa a Ngati Apa settlement since called Parewanui. Stayed there and crossed the Rangitikei to south side to Poutu. There my father wanted to go inland to look for a kainga for himself. Then we, (a small party) went up the south bank of Rangitikei leaving the body at Poutu. .... We then came down Oroua to Mangawhata. He (Te Whata) said this should be his place. ... We then came down Manawatu to the south - left our canoes and came onto Otaki and Waikanae there were no people here the lands were already been given to Te Wharepakaru by Pokaitara and Pehi and Ngati Toa chief), also Porirua", Te Whata replied "it is well, but you should tell Ngäti Raukawa what they are to have -" "ko ahau, he kainga ano toku, naku ano kimi ko Oroua te ingoa. Rauparaha assented. After this a party of Ngati Apa with Wi Mokomoko some (sic) of Te Hanea (Hamuera's brother) came to Kapiti, to fetch his mother, the women of whom Te Whata asked about the chief's (kete). We went back to Oroua with Mokomoko' party, to Roto-nui a hau. Found some Ngati Apa there –Greeted us and Kete. Te Raikokiritia and Te Hanea and Te Auahi. Te Raikakokiritia got up and said, " he oi ano Te kopaki mou, ko Aorangi" on the mountainside of Oroua and Whakaria; All the chiefs confirmed this gift. Te Auahi took a canoe and stuck it up as a pou and called it "Te Hokowhitu o Ngati Kauwhata". We*

[26] Petition of Te Kooro Te One and others to Governor Gray, 13 June 1866
[27] Evidence of Tapa Te Whata, 13-4-1868 Otaki Minute Book pages 613-626

accepted it. Ngati Apa had mana at that time. They gave us this land. ... After putting up this pou my father returned to Kapiti leaving some of Ngati Kauwhata at Oroua - Hori Te Nuku my tuakana was one and Hei Teina Hemokanga was another and Hairuha Huanga was another, and Toroa Hunganui these remained behind, went up to cultivate with Ngati Apa –after planting, they came down to Otaki which was then occupied. Stayed there and returned (a large party) to Oroua to take eels at Te Pekarakau -returned to Otaki it was after this that Hoawhenua took place. No other hapu's on the land between Manawatu and Rangitikei rivers. ... Tapa Te Whata in vain explained: There are several branches of Ngäti Kauhata [sic] – Ngäti Te Ihiihi-Ngäti Hinepare, Ngäti Kura and many others and the great name is Ngäti Kauhata-{Kauwhata?} and Ngäti Rakau {Raukawa ?} is the name which includes Parakaia's hapus- Ngati Turanga and Ngäti Te Au. Te Whata is my father-is chief of Ngäti Kauhata."

7.4 The core land within the proposed Manawatu ki Porirua Inquiry District includes land within what are now known as the following blocks:

(a) Rangitikei-Manawatu;

(b) Ahuaturanga;

(c) Aorangi/Oroua;

(d) Himitangi; and

(e) Awahou.

7.5 The claim rohe includes the Tangimoana Forest. Tangimoana Forest was included in the Rangitane o Manawatu Heads of Agreement in 1999, without consultation with Ngati Kauwhata.

7.6 Ngati Kauwhata traditional rohe also included lands in the land now known as Ohakea Air Force base. As set out in the Ngati Apa Deed of Settlement, Ngati Kauwhata, Ngati Raukawa and Ngati Apa have come to an agreement regarding this land.

7.7 *The Claim*

Native Townships

7.7.1 The Crown, in breach of its duties, established a native township scheme without adequate consultation with Ngati Kauwhata.

7.7.2 The native township scheme resulted in the alienation of Ngati Kauwhata's Rangitikei-Manawatu lands.

Particulars

7.7.3 The Native Townships Act 1895 was established to promote the "opening up" of Maori land, and also to establish a faster system than the Native Land Court, which was proving too slow.

7.7.4 The Awahuri Native Township was established within the tribal boundary of Ngati Kauwhata. In 1902, it was promoted as a European settlement, even though Europeans could not obtain title until 1903. Consequently, Awahuri lost 190 sections.

7.7.5 Subsequently the Crown undertook a series of legislative changes to the native townships regime. These began in 1905, which effectively saw the loss of any form of power Maori had over the township. Increasing pressure from European settlers to convert the land to freehold saw the enactment of the Native Townships Act 1910, replacing the 1905 Act. Leases could be perpetual and native allotments could now be leased with the consent of the owners. As a result land sales increased.

Council Disposal of Surplus Lands

7.7.6 The Crown caused or allowed the Manawatu District Council to dispose of surplus lands without consulting local iwi.

7.7.7 Through the Manfeild Park Act 2006, the Crown caused Ngati Kauwhata customary lands to be removed from Ngati Kauwhata control and management without any or adequate consultation with Ngati Kauwhata and without providing for their ongoing management of the land.

Particulars

7.7.8 The Kawa Kawa Block consisted of 1035 acres and was set aside as a Reservation for the people of Ngati Kauwhata. This block was vested in the name of Tapa Te Whata and Kereama Paoe. The Reservation was made inalienable unless the Governor General consented to a sale.

7.7.9 Ngati Kauwhata elders later brought a petition to Parliament outlining the unlawful taking and alienation of their land known as Native Reserve Block 2 Section 149 containing 1035 acres. The petitioners claimed that:

(a) the Bank of New Zealand succeeded in removing restrictions on sale of Kawakawa Native Reserve Block 2 Section 149 through a fraudulent application; and

(b) the Bank of New Zealand fraudulently procured the sale of the land from the Ngati Kauwhata owners to Mr John Hughey, a lessor of the land and mortgagor to the bank.

7.7.10 This petition was never tabled before Parliament and the petition has since been lost in a fire.

7.7.11 Parts of the Kawa Kawa block have been identified as being included in the Feilding Industrial Agricultural & Pastoral Association grounds, without the consent of Ngati Kauwhata. This land has become part of the Manfeild Park Trust Board.

7.7.12 When the Manfeild Park Act 2006 was enacted, the sections of the Bill creating an Electoral College were removed. Ngati Kauwhata had requested seats on this Electoral College to maintain their interest in and participate in the ongoing management of this block.

7.7.13 The Feilding Industrial Agricultural and Pastoral Association grounds were the subject of the original Wai 972 claim. The Crown failed to consult local iwi, ignored their submissions on the effects of the Act and denied Ngati Kauwhata the opportunity to participate in the ongoing management of their lands.

Dispersal from homelands

7.7.14 The Crown did not act or intend to act in the best interests of Ngati Kauwhata when offering members of Ngati Kauwhata loans to purchase housing in Feilding and Palmerston North.

7.7.15 The Council also encouraged members of Ngati Kauwhata to move away from their papakainga.

7.7.16 The Crown and Council actions resulted in the dispersal of a lot of Ngati Kauwhata people who moved away from their traditional homelands.

Particulars

7.7.17 In the 1950s Maori Affairs gave the people of Ngati Kauwhata loans to purchase housing in Feilding and Palmerston North.

7.7.18 The Crown's motive in offering these loans included, but are not limited to:

(a) Splitting up the marae and fragmenting the people of Ngati Kauwhata.

(b) Freeing up land for Pakeha to inhabit.

7.7.19 The Crown adopted underhand tactics to achieve these goals, including dealing with individuals rather than groups of people. These tactics resulted in:

(a) The physical fragmentation of Ngati Kauwhata from being shifted around the district; and

(b) Social fragmentation of Ngati Kauwhata by undermining the decision-making process of the iwi according to tikanga.

7.7.20 The dispersal and displacement was also initiated by the Council, who told Ngati Kauwhata people that if the river flooded their houses would be washed away.

7.7.21 After the people moved away from their papakainga they lost contact with their relatives and connection to their marae, and so lost the unity of people living together.

Returned servicemen

7.7.22 The Soldier Settlement Acts discriminated against Maori soldiers. Land around Kairanga and Rongotea was taken from Ngati Kauwhata and gifted to Pakeha returned servicemen.

7.7.23 Maori returned servicemen were not accorded the same entitlements because they had other land. However, this land was held in multiple-ownership.

Particulars

7.7.24 Ngati Kauwhata saw these as gifts to Pakeha returned servicemen and expected to get the land back.

7.7.25 The Crown made it apparent that the Pakeha returned servicemen were to return the land to the original owners when they had finished with it. This never happened.

7.7.26 Ngati Kauwhata servicemen would return from World War One to find that the Maori Land Court process had been used to allow others to succeed to their whenua.

Local Government

7.7.27 The Crown, in breach of its duties, failed to consult Ngati Kauwhata and uphold tino rangatiratanga when delegating some of its powers and functions to local government.

7.7.28 The Crown, in breach of its duties, failed to ensure that local government in the Ngati Kauwhata rohe was, and is, observing and giving effect to Treaty principles and guarantees.

7.7.29 The Crown, in breach of its duties, has failed to ensure that there are adequate mechanisms for Ngati Kauwhata representation in, or to ensure Ngati Kauwhata were/are adequately represented in, local government in its rohe.

Particulars

7.7.30 The Crown has delegated some of its powers and functions to subordinate organisations.

7.7.31 Within the Ngati Kauwhata rohe these have included in particular the Manawatu District Council.

7.7.32 The Manawatu District Council has failed to:

(a) Uphold the tino rangatiratanga of Ngati Kauwhata within its rohe;

(b) Act in partnership with Ngati Kauwhata;

(c) Provide adequate or appropriate representation for Ngati Kauwhata in its decision making processes; and

(d) Adequately or appropriately consult with Ngati Kauwhata.

7.7.33 Instead of taking the take back to the marae of Ngati Kauwhata, the Manawatu District Council set up a Marae Consultative Standing Committee for its own purposes.

7.7.34 The Marae Consultative Standing Committee lacks any real power to influence Council decision-making. Instead, it acts as a 'rubber-stamp' on Council decisions.

Non Land Resources

7.7.35 Ngati Kauwhata has interests in many rivers within their tribal boundaries, including:

(a) The Oroua River;

(b) The Manawatu River;

(c) The Rangitikei River;

(d) Pohangina River; and

(e) The Kiwitea Stream.

7.7.36 Ngati Kauwhata identify with and have a particular spiritual connection to the whenua and the waterways. All water is wahi tapu.

7.7.37 The Crown, in breach of its duties:

(a) Enacted legislation in 1903 which confiscated the beds of all navigable rivers. This legislation, to the extent that it extinguished the title of Kauwhata to the river beds, was a

seizure of private property and was contrary to the provisions and principles of Te Tiriti o Waitangi.

(b) Has claimed in other instances title to the river beds on the basis of the ad medium filum aquae rule as riparian owner.

7.7.38 The Crown has also acted in breach of its duties by creating marginal strips along the banks of rivers and vesting these in itself, 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 confirm title on the Crown.

Environmental Issues

7.7.39 The Crown, in breach of its duties, has usurped and undermined the tino rangatiratanga of Ngati Kauwhata by asserting management and control over the environment and by delegating powers of management and control over the environment to the detriment of Ngati Kauwhata.

7.7.40 The Crown, in breach of its duties, has allowed or caused the resources and kai in the rivers, in the bush and on the lands to become depleted through ongoing damage to the environment, including deforestation and pollution.

7.7.41 In particular the draining of the Kairanga and Rongotea Swamps and the construction of the Motua Flood Gates have caused a massive loss of food resources. Kairanga was the "food basket" of the area, surrounded by the Historical Kauwhata Pa of Maungawhata, Maungawhero, Raurangi, Puketotara, Awahuri and Kai Iwi.

Particulars

7.7.42 The streams and rivers were the food baskets of Ngati Kauwhata.

7.7.43 A wide variety of edible flora and fauna were taken and maintained by Ngati Kauwhata from these food baskets.

7.7.44 These resources no longer exist, or if they do extreme caution must be taken, because of the polluted state of the waterways.

7.7.45 This pollution is ongoing and of great concern to Ngati Kauwhata.

7.7.46 The Crown has enacted legislation which places Ngati Kauwhata's waterways under the immediate responsibility of local government.

7.7.47 Ngati Kauwhata alleges that the Manawatu District Council has ignored this responsibility, and, in some cases, actively breached it:

(a) The Council has contributed to the pollution of waterways by permitting effluent, chemicals and other pollutants to be discharged into them.

(b) In one instance the Council dumped old tarseal and gravel into a creek running behind Awahuri 9A and 9B.

(c) The Council eventually removed this rubbish, but only after being confronted with the environmental ramifications of its decision.

7.7.48 The Crown actively contributed to environmental instability, particularly regarding Oroua River:

(a) The Council removed native trees.

(b) It replaced these trees with willows.

(c) The willows grew quickly and the Council cut them down.

(d) This caused silt to build up and narrow the river.

(e) This narrowing resulted in the loss of islands that were used for camping.

(f) This narrowing also contributed to the 2004 flooding of the river and surrounding Ngati Kauwhata land.

Tribal identity

7.7.49 The Crown has repeatedly adopted incorrect designations of Ngati Kauwhata's tribal identity. This has confused the way in which Ngati Kauwhata have been dealt with by the Crown, its agents, local government and Crown corporate bodies over the years.

7.7.50 The Crown has failed to recognise Ngati Kauwhata as a separate iwi. The Crown has referred to Ngati Kauwhata as a hapu of Raukawa.

7.7.51 Not only can Ngati Kauwhata whakapapa back to Kauwhata as the eponymous ancestor, they have always retained separate identity and marae in both the Waikato and Manawatu.

7.8 ***Prejudice as a Result of the Crown's Acts and Omissions***

7.8.1 The acts and omissions of the Crown have resulted in the social and economic destabilisation of Ngati Kauwhata hapu and whanau.

7.8.2 The effects of Crown acts or omissions 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 Ngati Kauwhata hapu and whanau, and the creation of intra hapu and whanau tensions and disputes.

7.8.3 As a consequence of Crown acquisition of their lands as particularised above, Ngati Kauwhata hapu and whanau were disposed of their economic and sustaining resources, including the land, mahinga kai, birding, cultivation, gathering and fishing resources.

7.8.4 Ngati Kauwhata hapu and whanau were also dislocated from their traditional lands, wahi tapu, and resources, which destabilised their traditional patterns of resource use, economic structures and societies and hampered and/or prevented them from economic utilisation and development of their remaining resources.

7.8.5 Ngati Kauwhata was left with a land base that was completely inadequate.[28]

7.8.6 Ngati Kauwhata has also been, and continues to be, prejudicially affected in the Rangitikei-Manawatu region in that:

(a) Ngati Kauwhata's rangatiratanga, lore and customs have been undermined;

(b) Ngati Kauwhata's ability to exercise tino rangatiratanga, including the right to posses, manage and control their property, resources and social structures in accordance with Ngati Kauwhata's lore, cultural preferences and customs have been severely diminished;

(c) Ngati Kauwhata had been prevented from developing, exploiting and managing their resources in a manner consistent with their cultural preferences;

(d) Ngati Kauwhata's social structures have been damaged;

---

[28] Dr Raebum Lange, *The Social Impact of Colonisation and Land Loss on the Iwi of the Rangitikei, Manawatu and Horowhenua Region, 1840-1960*, December 2000, p 245

(e) The cultural taonga and traditions of Ngati Kauwhata have been damaged;

(f) The physical environment in which Ngati Kauwahta hapu and whanau have lived since their arrival pre-1840 has been damaged;

(g) Ngati Kauwhata have faced and continue to face:

(i) Poverty, destruction of the economic base, and economic marginalisation; and

(ii) Poor health, sickness and high mortality.

8. **Relief**

8.1 Ngati Kauwhata seeks the following relief in respect of all their Waikato-Raukawa/Te Rohe Potae/Waikato-Tainui and Rangitikei-Manawatu lands:

(a) That the Tribunal inquire into the prejudice to Ngati Kauwhata arising from breaches of Te Tiriti o Waitangi by the Crown including those alleged in the Statement of Claim.

(b) That the Tribunal make findings as to breach and prejudice, in the terms alleged and generally, and as the Tribunal further determines.

(c) That the Tribunal make recommendations for the recognition by the Crown of Ngati Kauwhata's tino rangatiratanga consistent with Te Tiriti including restoration to Ngati Kauwhata of their tino rangatiratanga and full customary entitlements to their lands, rivers, waterways and other resources.

(d) The full and meaningful recognition of Ngati Kauwhata tino rangatiratanga in accordance with their lore and customs, over their lands, estates, forests, fisheries, other properties, lakes, rivers, waterways, other resources and taonga including whether or not such taonga are perceived now as being in their ownership or possession.

(e) The means by which such recognition must be effected to accord with Te Tiriti guarantee of the tino rangatiratanga of Ngati Kauwhata.

(f) The return to Ngati Kauwhata of all ancestral lands, estates, forests, fisheries, other properties, lakes, rivers, waterways and other resources and taonga wrongfully acquired by the Crown.

(g) Pursuant to Sections 8A-8H(j) of Te Tiriti o Waitangi Act 1975 return to Ngati Kauwhata all relevant Crown land including:

(i) Land held by any state-owned enterprise;

(ii) Land held by any institution under the Education Act 1989; and

(iii) Land held under the Crown Forest Assets Act 1989.

(h) The establishment of a fair process which will enable Ngati Kauwhata and the Crown to resolve issues between them.

(i) The restoration of the social, cultural, resource and economic base of Ngati Kauwhata in a full and substantial manner and appropriate apology.

(j) The compensation for inter alia the loss of customary use, occupation and enjoyment of lands, estates, forests,

fisheries, other properties, lakes, rivers, waterways and other resources and taonga as a result of breaches of Te Tiriti since its execution down to the present.

(k) The recognition of Ngati Kauwhata kaitiakitanga and rangatiratanga in relation to their taonga.

(l) The payments of the full costs of Ngati Kauwhata for the presentation of this claim and the costs of recovering any land recommended to be returned of other costs incurred in securing the implementation of these recommendations.

(m) The return to Ngati Kauwhata of their allodial property rights under the doctrine of eminent domain.

(n) The granting of such other relief as the Tribunal sees fit.

9. The Claimants reserve the right to seek leave to amend this Statement of Claim including, and in particular, following the receipt and consideration of the Wai 898 and 2200 research casebooks.

This Statement of Claim is filed by Dr Bryan Gilling of Rainey Collins Lawyers, Counsel for the Claimants. The address for service for the claimants is Level 16, 163-171 Featherston Street, Wellington.

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

(a) Posted to the solicitor at PO Box 689; or

(b) Left for the solicitor at document exchange for direction to DX SP20010, Wellington; or

(c) Transmitted to the solicitor by facsimile (04) 473 9304; or

(d) Emailed to the solicitor at bgilling@raineycollins.co.nz / jsarich@raineycollins.co.nz / rsandri@raineycollins.co.nz

Documents served on the Claimants should be marked for the attention of Dr Bryan Gilling, Jo-Ella Sarich and Rebecca Sandri.