WAITANGI TRIBUNAL

WAI 37

IN THE MATTER OF section 6 of the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the claims by **MARGARET MAKARITI POINGA** on behalf of herself and on behalf of the members of **NGATI RAKEIPOHO/ HIKAIRO**

AMENDED STATEMENT OF CLAIM

1 INTRODUCTION

1.1 **THIS** claim replaces and incorporates the earlier claim of Margaret Makariti Poinga which was lodged with the Waitangi Tribunal on 31 March 1987 and is registered as WAI 37.

1.2 **THE** claimant is a Maori and a member of the Ngati Rakeipoho/Hikairo iwi.

1.3 **NGATI RAKEIPOHO/HIKAIRO** descend from the central North Island iwi of Te Arawa and Tuwharetoa. Ngati Rakeipoho/ Hikairo are recognised by other iwi as having their own resources and land within the central North Island over which they have mana and exercise kaitiakitanga.

1.4 **THE** claimant on behalf of herself and the members of Ngati Rakeipoho/Hikairo claims that she is prejudicially affected by certain Acts, policies, omissions and commissions of the Crown. These are outlined as follows.

2 THE ROHE POTAE

2.1 **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.

2.2 **FOR** this purpose, the Rohe Potae was created, being the district outlined in red attached and marked with the letter "A". This district included the land of Ngati Rakeipoho/Hikairo.

2.3 **INITIALLY** the iwi of the Rohe Potae were opposed to any European intrusions in the areas described and prevented any such intrusions after establishing Aukati (carved poles marking a line not to be passed).

2.4 **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.

2.5 **THE** Crown was wishing to complete the section of the railway from Marton to Te Awamutu.

2.6 **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.

2.7 **MAORI** claim that 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.

More particularly, Maori claim it was agreed between them and the Crown:–

- That the tribes would sanction the construction of the railway line.

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

- 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.

- That no gold would be prospected without Maori consent.

- That no liquor licences would be granted in the district.

2.8 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 s.8 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 Rakeipoho/Hikairo were to lose large areas of land.

2.9 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).

2.10 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.

3 THE BREACHES OF THE ROHE POTAE AGREEMENT AND THE TREATY

3.1 THE Crown did not adhere 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, Rakeipoho/Hikairo, 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.

3.2 IT is claimed the surveys and the laws and the application thereof under which the Court awards were made were contrary to the Treaty in that they broke the tribal rangatiratanga that the Treaty guaranteed and resulted in substantial land losses and the loss of the tribal economic base and tribal control.

3.3 IT is further claimed that 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.

4 THE INDIVIDUALISATION AND FRAGMENTATION PROCESS

4.1 THE Crown created the Native Land Court and enabled it to sit at various places in and around the Rohe Potae to individualise titles to land within the Rohe Potae, including the land of Ngati Rakeipoho/Hikairo.

4.2 THE individualisation process was inappropriate. Individualisation of title was contrary to tikanga Maori and the express

guarantees in the Treaty that tino rangatiratanga over lands would be retained by the tribes so long as it was their wish to retain the same.

4.3 THE individualisation process per se was contrary to the Treaty in that it broke tribal rangitiratanga and the guarantee of undisturbed possession as individualisation was designed to facilitate alienation from Maori of their land.

4.4 THE individualisation process enabled people to fraudulently claim ownership rights to land that they would not have been granted had an appropriate investigation occurred.

4.5 THE individualisation of titles process was corrupted by the Crown's wish to name "friendly natives" who would co-operate by selling land. Often these "friendly natives" so co-operated because they were selling land not rightfully theirs to sell.

4.6 THE individualisation process was contrary to the Treaty in that it enabled land to be alienated from Maori without the consent of the true owners and this breached the guarantee undisturbed possession.

4.7 THE individualisation and fragmentation of title was contrary to the principle of the Treaty of Waitangi which guaranteed the Maori people the right to retain their own lands in accordance with their own customs and their own customs to govern their dealings with each other.

4.8 THE Treaty guaranteed the right of tribes to retain their lands in accordance with their own customs and not to be exposed to settler or Crown pressure to sell them. The laws enabling individualisation and fragmentation of title breached this solemn promise.

4.9 THE process of individualisation enabled persons without significant links to the land to participate in the sale process, and resulted in payments (where intended), not being made or being misdirected.

5 ACQUISITION OF LAND IN EXCESS OF THE CROWN'S NEEDS

5.1 THE Crown acquired land in the claimants rohe which was surplus to the Crown's requirements.

5.2 THE acquisition by the Crown of land which was excess to the Crown's need was in breach of the Treaty in that it left the claimant virtually landless.

5.3 BY acquiring almost all the land within the claimants' rohe the Crown has breached its duty to ensure that Ngati Rakeipoho/Hikairo maintained a sufficient endowment for its foreseen needs.

6 THE NORTH ISLAND MAIN TRUNK RAILWAY LOAN APPLICATION ACT 1886 AND ITS AMENDMENTS

6.1 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."

6.2 **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".

6.3 **THAT** following individual land buying techniques huge blocks were to be purportedly purchased pursuant to these provisions amongst these were the Okahukura and Taurewa blocks.

6.4 **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 ...". A list of the land within the rohe of Ngati Rakeipoho/Hikairo that was included in the said gazette notice is attached and marked "B".

6.5 **THAT** 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.

6.6 **THAT** 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.

6.7 **THE** acquisition of the land described in the schedule attached and marked with the letter "B" 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.

7 THE TAUREWA FARM

7.1 **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.

7.2 **THIS** land is now farmed as the Taurewa Farm. It is managed by LandCorp Management Services Limited which is a state owned enterprise duly constituted pursuant to the State Owned Enterprises Act 1986.

7.3 **THE** portion of the Taurewa Farm that lies east of the Whakapapanui River is delineated on a map attached and marked with the letter "C".

7.4 **INCLUDED** in the land farmed as 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 a Gazette notice already referred to and attached marked with the letter "B".

7.5 **IT** is claimed that 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. These breaches have been set out in paragraphs 4 and 5 hereof.

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

7.7 **LANDCORP MANAGEMENT SERVICES LIMITED** have informed the claimants' solicitor that the Taurewa Farm will disposed of in the near future.

7.8 THE claimants claim that the disposal of the Taurewa Farm before the settlement of the Ngati Rakeipoho/Hikairo claim would be a further breach of the Treaty.

8 FOREST LAND—TAUREWA BLOCKS

8.1 **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.

8.2 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 MOUNT TONGARIRO

9.1 **NGATI RAKEIPOHO/HIKAIRO** claim that they have mana over Mount Tongariro, they have always had mana over this mountain and never consented to its gift to the Crown.

9.2 **NGATI RAKEIPOHO/HIKAIRO** have ancestors buried on the slopes of Mount Tongariro, these burial sites are waahi tapu and must not be disturbed.

9.3 **NGATI RAKEIPOHO/HIKAIRO** deny that Chief Te Heu Heu Tukino had authority to gift Mount Tongariro to the Crown.

9.4 **NGATI RAKEIPOHO/HIKAIRO** have mana over Mount Tongariro that requires recognition and accommodation by the Crown.

9.5 **FURTHER** particulars of this aspect of this claim will be supplied.

10 MOUNT PIHANGA AND LAKE POUNAMU

10.1 **MOUNT PIHANGA** and Lake Pounamu are places of special significance to Ngati Rakeipoho/Hikairo. They have mana over this mountain and lake.

10.2 **NGATI RAKEIPOHO/HIKAIRO** were wrongly dispossessed of these resources.

10.3 **FURTHER** particulars will be supplied.

11 THE LAKE ROTOAIRA BASIN AND OKAHUKURA BLOCKS

11.1 **NGATI RAKEIPOHO/HIKAIRO** claim that the Crown acquired lands of Ngati Rakeipoho/Hikairo in the Okahukura, Ohuanga and other blocks without adequate compensation and in some cases from people who did not have the power of sale thereover.

11.2 **THE** lands so acquired include the Ketetahi Springs.

12 RECENT PUBLIC WORK ACQUISITIONS AND PURCHASES

12.1 **THE** claimants claim that many other lands were wrongly acquired by purchase or public works takings.

12.2 **LAND** acquired pursuant to the provisions of the Public Works Act were purportedly required for specific purposes however when these purposes ceased to exist the land was not returned.

12.3 **SOME** land was acquired pursuant to the Public Works Act for specific purposes but has never been utilised for the stated purpose.

12.4 **SOME** land was acquired pursuant to the Public Works Act for specific purposes and has ceased to be so used but has been subsequently transferred to other Crown agencies or left idle.

13 FUTURE DISPOSITIONS

13.1 **THE** disposition of the Crown by any land within the rohe of Ngati Rakeipoho/Hikairo subsequent to the filing of this amended claim would amount to further breach of the Treaty in that it will make the Crown unable to adequately settle the claim of Ngati Rakeipoho/Hikairo for the breaches of the Treaty that they have suffered from 1840 to present day.

14 FUNDING FOR CLAIMS

14.1 **THAT** the current process of the Crown's negotiation and settlement of outstanding grievances with Maori is inadequately funded and hence prejudices the ability of Maori to adequately investigate and settle their outstanding grievances.

15 GENERAL

15.1 **THAT** 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) That that land was sold by the wrong people.

(e) That the effect of the sale was to leave some hapu landless.

(f) That 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) That 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.

15.2 **THAT** land acquired wrongly and for inadequate compensation was in breach of the Treaty.

15.3 **THE** acquisition of almost all the land of Ngati Rakeipoho/Hikairo has devastated Ngati Rakeipoho/Hikairo economically, spiritually and socially.

16 RELIEF

16.1 **THE** return of the portion of the Taurewa Farm that lies east of the Whakapapanui River.

16.2 **THE** return of all Crown Forest and known as Tongariro or Taurewa Forest.

16.3 **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.

16.4 **THE** return of Mount Tongariro, Mount Pihanga, and Lake Pounamu and the Ketetahi Springs to Ngati Rakeipoho/Hikairo.

16.5 **THE** return of all other lands, forests and resources wrongfully acquired.

16.6 **THE** return of other Crown lands, forests and resources by way of compensation.

16.7 **COMPENSATION** for exclusion from the lands and resources wrongfully acquired.

16.8 **AS** an interim measure, the claimant tribes seek a recommendation that until the claims have been properly inquired into, no Crown land in the disputed area will be disposed of without a prior agreement with the proper representatives of those tribes.

16.9 **AND** such additional or alternative interim relief and compensation as may be proposed at hearing by the claimants.

16.10 **A REVIEW** of the availability of funding for claimants to the Waitangi Tribunal.

16.11 **MONETARY** compensation for the costs of bringing this claim to the Waitangi Tribunal.

16.12 **SUCH** further relief as the Tribunal considers appropriate.

17 APPOINTMENT OF COUNSEL

17.1 **WE** request that, pending the determination of our legal aid application, Counsel be appointed pursuant to clause 7A of the Second Schedule to the Treaty of Waitangi Act 1975.

17.2 **COUNSEL** we wish to have represent us are John Martin Dawson and Kathy Ertel of Luckie Hain Kennard & Sclater.

18 NOTIFICATION OF OTHER PARTIES

18.1 **WE** believe that the following organisations should be given notice of our claim:

(a) the Crown by her representative the Attorney-General
(b) the New Zealand Railway Corporation
(c) Landcorp Management Services Limited
(d) The Ministry of Forestry
(e) Timberlands Limited
(f) The Department of Conservation
(g) The Department of Survey and Land Information
(h) The Commissioner of Crown Lands.

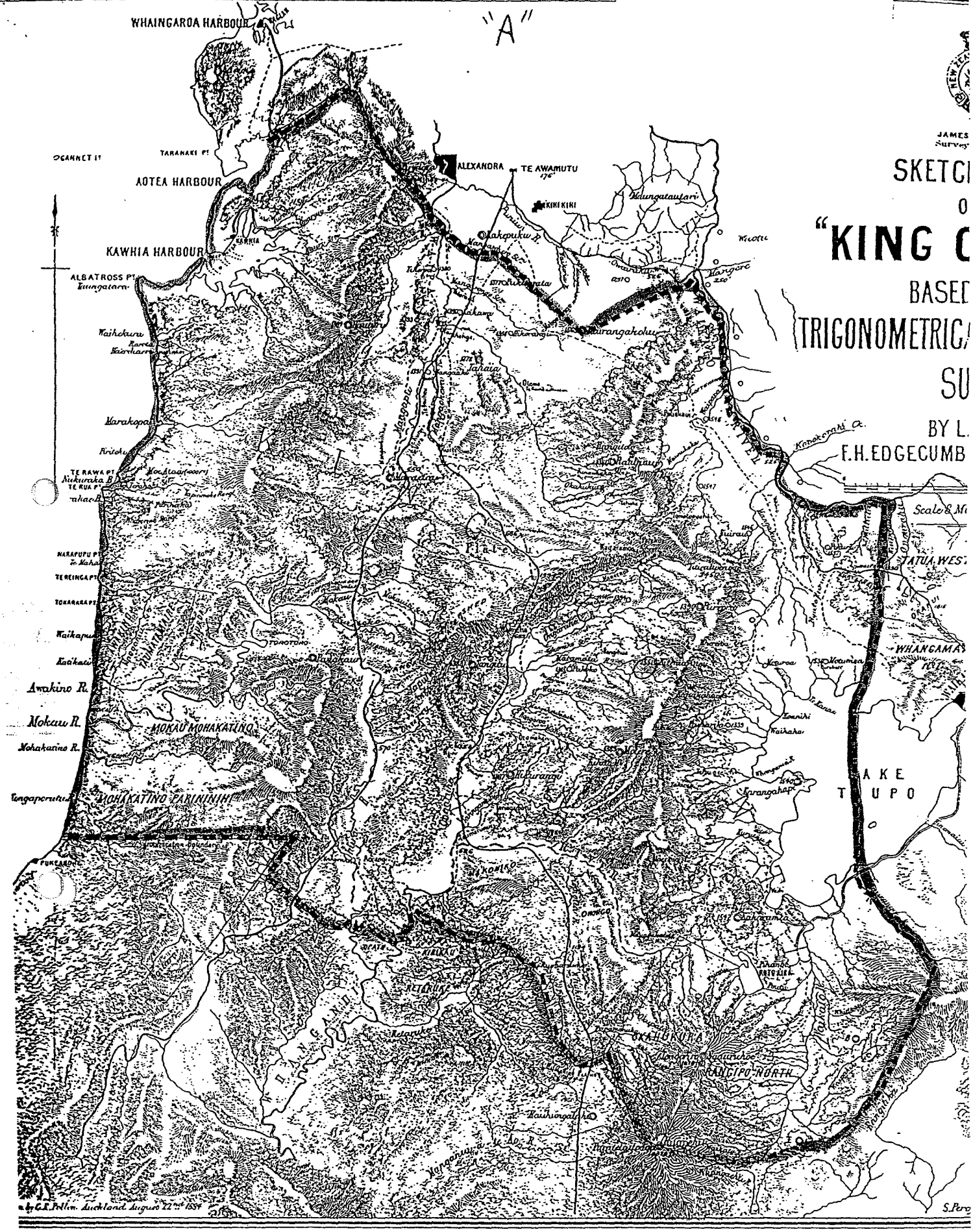
DATED this 7th day of October 1991

Kathy Ertel

Kathy Ertel
Counsel for Claimants

THIS statement of claim is filed by Kathy Lee-Anne Ertel, whose address for service is Luckie Hain Kennard and Sclater, 5th floor Harbour City Tower, 29 Brandon Street, PO Box 204, DX 8004, Wellington.

"A"



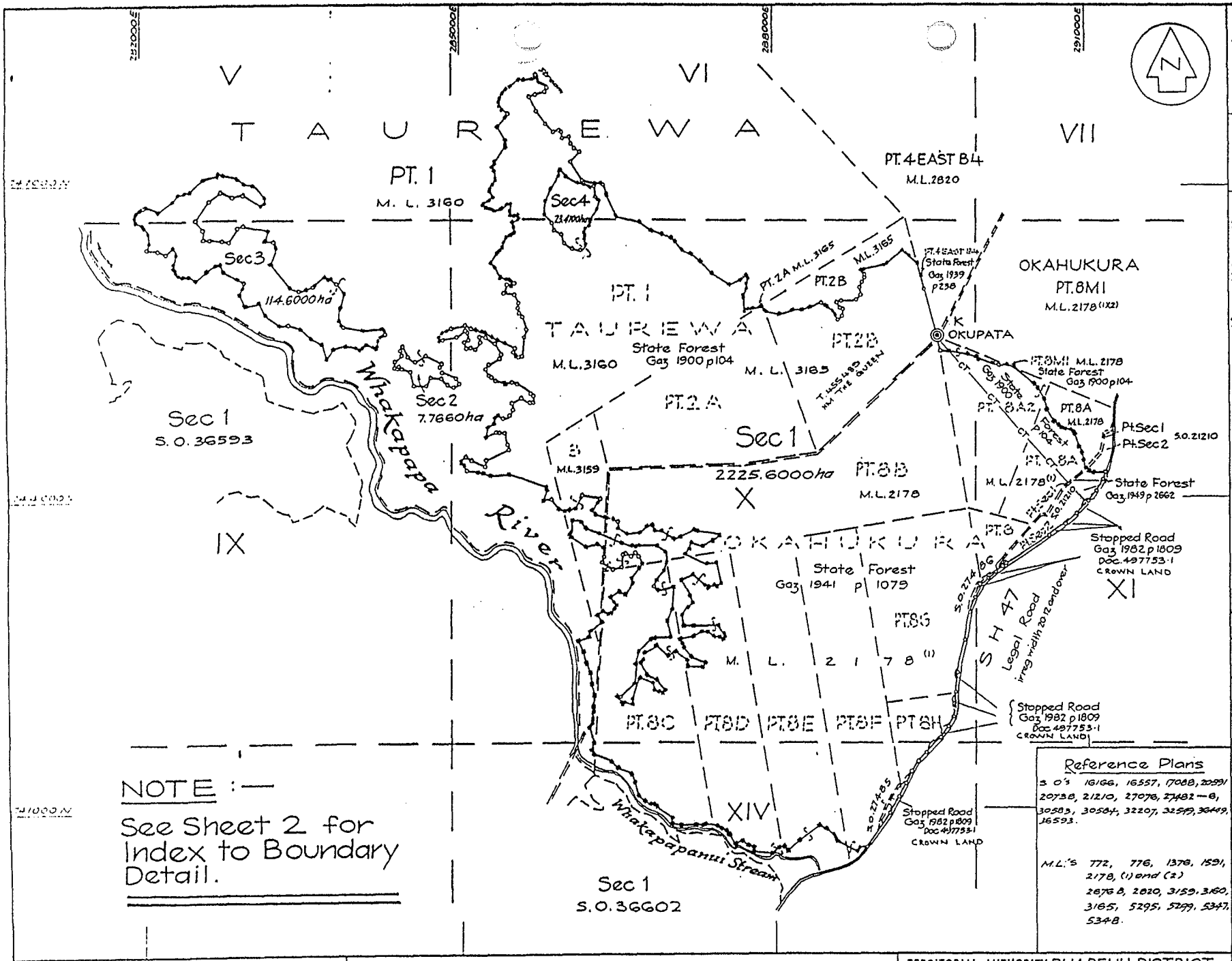
Photolithographed at the General Survey Office, Wellington N.Z. September 1884.

Sketch Map of the King Country
Based Upon Trigonometrical & Topographical
Survey by L. Cussen, F. H Edgecumbe & W.C. Spenc

SOURCE: AJHR 1884 Sess II, C-1, p29.

"B"

Number of Blocks		Acres
Taurewa	No. 2A	500
"	No. 3	200
Okahukura	No. 8	6,766
"	No. 8A	592
"	No. 8A No. 2	300
"	No. 8B	802
"	No. 8C	446
"	No. 8D	446
"	No. 8E	446
"	No. 8F	446
"	No. 8G	446
"	No. 8H	446
"	No. 8J	200
"	No. 8K	200
"	No. 8L	200
Tawhai South		2,000



NOTE :—

See Sheet 2 for Index to Boundary Detail.

Reference Plans

S O's 16166, 16557, 17088, 20591, 20738, 21210, 27076, 27482—6, 30583, 30584, 32207, 32519, 36449, 36593.

M.L.'s 772, 776, 1378, 1591, 2178, (1) and (2), 2676 B, 2820, 3159, 3160, 3165, 5295, 5299, 5347, 5348.

Approvals

Approved as to Layout

Regional Manager
Corporation

Regional Conservator
Department of Conservati

Section 1 Formerly:— Pt Sec 1 and Pt Sec Blk XI Tongariro S.D. PT TAUREWA 1, 2 2B, 3,4 EAST B4, PT OKAHUKURA 8, 8A, 8, 8B, 8C, 8D 8E, 8F, 8G, 8H, 8M1 and Part Stopped Road situated in Blk's VI, I X, XI and XIV Tongariro S. D.

Section 2 Formerly:— PT TAUREWA 1 situated in Blk's IX and X Tongariro S

Section 3 Formerly:— PT TAUREWA situated in Blk's V and IX Tongariro S

Section 4 Formerly:— PT TAUREWA situated in Blk's VI and X Tongariro S.

Total Area 2371.3760 ha

Comprised in Gaz 1900 p 104, Gaz 1941 p 1079, Gaz 1949 p Gaz 1939 p 238, Gaz 1982 p 1809 (Doc 497753.1) T 455-1

I Robin Arthur Payne of Palmerston North Registered Surveyor and holder of an annual practising certificate for t may act as a registered surveyor pursuant to section 25 of the Survey 1986 hereby certify that this plan has been made from surveys execu by me or under my directions, that both plan and survey are correct have been made in accordance with the Survey Regulations 1972 or regulations made in substitution thereof.

Dated at Palmerston Nth this 30th day of MAY 1991. Signature

Field Book 5959 p 1-25 Traverse Book 491 p 55-10
F.B.'s 5998 p 1-49, 5999 p 1-31, 6000 p 1-35, 6001 p 1-25, 6002 p 2-12, 6005 p 4-6.
Examined HJ Buchanan Correct

Approved as to Survey
30/8/91
Chief Survey

Deposited this day of 19

District Land Registr

LAND DISTRICT WELLINGTON	SECTIONS 1—4 S. O. 36603
Survey Blk. & Dist. V, VI, IX, X, XI, XIV TONGARIRO	
NZMS 261 Sheet S19 Record Map No. 73, 83, 74, 84,	

TERRITORIAL AUTHORITY RUAPEHU DISTRICT
DEPARTMENT OF SURVEY AND LAND INFORMATION
Surveyed by
Scale 1: 25,000 Date APRIL—MAY 1991

Fds 6275-07-07
Received 11.6.91
Instructions 6904-41, 6725-60

S03660