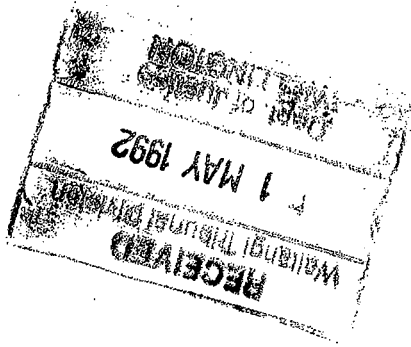


WAITANGI TRIBUNAL

OFFICIAL

WAI 48 AND OTHERS



CONCERNING The Treaty of Waitangi
Act 1975

A N D Whanganui ki
Maniapoto Land Claims

PARTICULARS OF CLAIM

1 BACKGROUND TO THE CLAIMS

- 1.1** THAT following large land alienations to the south at Whanganui (1849) and to the east at Hawkes Bay (1851); and following major land confiscations to the west at Taranaki (1863) and north at Waikato (1864), the iwi of the interior combined to establish districts in which land sales would be constrained and decisions on land use and alienation would be effected only in the customary way with tribal control.
- 1.2** FOR this purpose, the Rohe Potae was created in the northern sector, being the district outlined in red on the map attached as A. The district included the lands of Ngati Maniapoto, Ngati Hikairo, Ngati Tuwharetoa, Whanganui and Waikato iwi. To settlers it was known as the King Country because it was to this area that King Tawhiao retreated after the confiscations of his lands in Waikato.
- 1.3** TO the south of the Rohe Potae the Whanganui tribes under Keepa Te Rangihwinui (also known as Major Kemp) established a district in which lands might be leased and not sold and called "Kemps Land Trust", in respect of the lands of the Whanganui river tribes from Kaurapaoa, 10 miles upriver from Wanganui, and across to what Maori called Murimotu, a district encompassing approximately the area from Raetihi to Waiouru.

1.4 THAT the intention of the Queen was clear and made known to the Crown agents acting in New Zealand. Evidence of this is contained in the following quotation of the Marquis of Normanby 14 August 1839 cited in a letter sent by Wesleyan Missionary Committee to the Right Honourable Earl Grey dated 27 February 1838, it stated:

"The Queen in common with Her Majesty's immediate predecessor disclaims for herself and for her subjects every pretensions to seize on the Islands of New Zealand or to govern them as part of the Dominion of Great Britain, unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained."

1.5 THAT initially the iwi of the Rohe Potae and Whanganui river iwi 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).

1.6 SUBSEQUENTLY 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 and in fact, every Crown Ministry in that period was at some stage involved. Some particular agreements were reached but no general compact emerged until the 1880s. By 1880 the main trunk railway had extended to Marton in the south and Te Awamutu in the north.

1.7 THAT the Government was wishing to complete the route from Marton to Te Awamutu through Murimotu, Taumarunui, Ongarue, Tuhua, Te Kuiti, Otorohanga and Kihikihi, and to establish railway stations and sidings. The northern sector of that route is depicted in blue on the map attached as B.

1.8 THE Government sought also to survey the land and to have the Native Land Court settle the ownership of titles 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.

1.9 MAORI claim that at about this time, at various places, arrangements or agreements were concluded for the opening of the Rohe Potae and Kemp Trust lands, 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.

- 1.10** THAT key meetings in the Maori history of events, were those of Keepa Te Rangihwinui in 1874, and those with Premier Grey in 1878, Native Minister Sheehan in 1879, Native Minister Bryce in 1882, and the meetings with Bryce at Kihikihi and with the Ministers of the Crown at Parliament in 1883, and with Bryce again in 1884.
- 1.11** THAT Maori claim the same terms were discussed at subsequent meetings, although by then it was increasingly apparent that the Government might not adhere to them, at Ranana and at Kihikihi with Native Minister Ballance in 1885, at Parikino with Colonel McDonnell in 1892 and with Prime Minister Seddon and with Native Minister Carroll in 1895.
- 1.12** THAT it appeared at first the agreement would be upheld. The Rangipo-Murimotu Agreement Validation Act 1882 appeared to follow the agreement with Keepa Te Rangihwinui that Murimotu-Rangipo would be leased, not sold. 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 from Marton to Te Awamutu. Subsequently however, the arrangement or agreement was not upheld and the tribes were to lose large areas of land thus leading to the current claims.
- 1.13** THAT some tribes claim the land for the railway line and for railway stations and sidings, was gifted. 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).

- 1.14** THAT 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.
- 1.15** THAT in the alternative some tribes contend that payment was intended, and that some payments were made, others were not (including those of Whanganui, Ngati Maniapoto, Waikato, Hikairo, Tuwharetoa, Maniapoto).

THE NATURE OF THE CLAIMS

2. THE RURAL LANDS

- 2.1** THAT the Crown did not adhere to the agreements effected with the Whanganui ki Maniapoto 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 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.
- 2.2** 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.

2.3 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.

2.4 THAT the Crown did not maintain regular contact with the proper tribal representatives on the route and development of the railway, and that it withheld payments on lands acquired as a way of coercing alternative agreements.

3 THE NORTH ISLAND MAIN TRUNK RAILWAY LOAN APPLICATION ACT 1886

3.1 THAT 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.

- 3.2 THAT huge blocks were purportedly to be purchased pursuant to those provisions, at Murimotu, Tuhua, Okahukura, Ohunga, Waimarino, Taumatamahoe and other places following individual land buying techniques that were started in 1884, even before the Act was passed.
- 3.3 THAT the purchase of Waimarino No.1 Block is an example of an acquisition under that Act, and of a purchase that has been the subject of long-standing Maori claims. This was a block of 417,750 acres extending for about 35 miles south along the main trunk railway from Taumarunui and purchased for £35,000 pursuant to the North Island Main Trunk Railway Loan Applications Act 1886. Annexed as C is a depiction of the Waimarino No.1 Block.
- 3.4 THAT the Stout-Ngata Commission commented on this purchase (AJHR 1907 vol.3, G-1 Ap 5: Chief Justice Stout, Mr A T (later Sir Apirana Ngata).

“In the whole history of the colony there has never been any purchase so extensive in any district or one completed with such expedition.”

And in a brief review of Crown purchases of native land the Commission noted:

"From 1881-1907 a total area purchased 1,273,000 at a cost of £273,340. Nearly one half of this area lies within the boundaries of the North Island Main Trunk Railway loan system of blocks and was acquired in conjunction with that undertaking ... Amount paid to owners did not amount to more than 4 shillings an acre."

- 3.5 THAT Maori have consistently disputed the propriety of the Waimarino sale—thus, the Te Kere Petition No.127 AJHR 1888, Vol.III, 1-3, p.30 (and 28 other petitions from 1886 to 1943) through to proceedings in the High Court for an injunction in 1988, to restrain the sale and destruction of Waikune Prison buildings erected on part of the former Waimarino Block.
- 3.6 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.
- 3.7 THAT the enactment of the North Island Trunk Railway Loan Application Act 1886 was contrary to the Treaty because this Act 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.

**4 MURIMOTU LANDS, TAMATAMAHOE KIRIKAU AND
RETARUKE BLOCKS**

4.1 THAT the land referred to in the attached schedule marked "C" was first leased then freeholded to enable alienation without the consent or knowledge of the Maori owners. It was the wish and desire of the Maori owners to retain this land.

4.2 THAT the leasing and freeholding or acquisition of the lands referred to in the schedule marked "C" was contrary to the Treaty in that the alienation of these lands breached the Article 2 guarantee of full and undisturbed possession of the lands that it was the wish and desire of the owners to retain.

5 THE TOWNSHIP LANDS

5.1 THAT the Native Townships Act 1895 was an Act to promote the settlement and opening up of the interior of the North Island. The preamble noted the main purpose of the Act, namely "... in many cases the native title cannot at present be extinguished in the ordinary way of purchase by the Crown ...". The townships of Otorohanga, Te Kuiti, Taumarunui, Hihitahi and Utiku were all created under this Act.

5.2 THAT under the Act, the surveyors would locate appropriate places for towns and would lay out townships in accordance with maps then produced. Under the Act, streets and all reserves required for public purposes as shown upon the map, became vested in the Crown without consent of Maori and without compensation. The major public facilities and reserves of the above townships are on lands so acquired.

5.3 THAT it is claimed that the Native Townships Act 1895, and the action taken under it, were contrary to the principles to the Treaty of Waitangi and were prejudicial to Maori in that there were consequential substantial land losses.

- 5.4 THAT** under the Act, the sections set aside for Maori occupation, were not to exceed 20% of the total area of the township.
- 5.5 THAT** the balance was to be leased by the Crown on behalf of Maori. This also was contrary to the Treaty of Waitangi being alienations without consent.
- 5.6 THAT** thereafter the Crown failed to take adequate steps to ensure the retention of the land held by the Crown for Maori benefit, which steps it is claimed, should have been taken under the Treaty.
- 5.7 MOST** of the land passed from Maori ownership did so by purchases or long term, low rental leases arranged by the Crown and by Public Works takings. For example:

315 allotments were leased by the Crown on behalf of Maori in Otorohanga. As at 1975 only 43 remained and each on perpetually renewable leases. All that remain in Te Kuiti at 1975, are two sections totalling 1 rood 12.56 perches shared by 17 people, and subject to a perpetually renewable lease returning \$150.00 per annum. By 1975 in Taumarunui the Crown had purchased about 173 acres of the areas leased by the Crown on behalf of Maori, leaving 187 Maori sharing 14 acres 2 roods, 12.78 perches subject to a perpetual lease.

- 5.8 THAT** the leasing and freeholding or acquisition of the lands referred to in paragraphs 5.1 and 5.7 was contrary to the Treaty in that the alienation of these lands breached the Article 2 guarantee of full and undisturbed possession of the lands that it was the wish and desire of the owners to retain.

6 THE WHANGANUI PURCHASE

- 6.1** THAT there are discrepancies in the reserves set aside in the "Whanganui Land Question", as per the 1848 Whanganui Purchase of Whanganui by the New Zealand Company. These discrepancies led to important sacred sites being omitted from reserves.
- 6.2** THAT there was a one sided negotiation process when this area was purchased and subsequently settled by the European. This has led to those sacred sites being accorded inadequate regard and protection and culminating in the railway line passing through some of these sites.
- 6.3** THAT the leasing and freeholding or acquisition of the lands referred to in paragraphs 6.1 and 6.2 was contrary to the Treaty in that the alienation of these lands breached the Article 2 guarantee of full and undisturbed possession of the lands that it was the wish and desire of the owners to retain.

7 FOREST LAND

- 7.1** 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.
- 7.2** The forests referred to in paragraph 7.1 include those currently known as the Karioi Forest, the Erua Forest and Lismore Hill Forest.

8 RECENT PUBLIC WORK ACQUISITIONS AND PURCHASES

- 8.1** MAORI claim that many other lands were wrongly acquired by purchase or public works takings. These include lands taken in the townships, for domains, golf links, rubbish dumps, schools, saleyards, and hospitals.

- 8.2 **A SPECIFIC** complaint relates to Taumarunui township lands allocated to Maori on which Hauaroa Marae once stood, but was compulsorily acquired at about 1937 for Government departmental buildings. It is claimed that this was part of a policy to shift Maori and Maori marae out from the inner town area.
- 8.3 **THAT** the policy of shifting Maori from their land and Papakaianga where it was located in inner town and/or urban areas was contrary to Articles 2 and 3 of the Treaty. Article 2 because it was the wish of Maori to retain that land, and Article 3 because this was not the policy exercised in relation to other non-Maori British subjects.
- 8.4 **CLAIMS** also relate to other land within the rohe of Whanganui ki Maniapoto and Rohe Potae. Specifically Waimarino lands were taken for National Park purposes, Rangitoto-Tuhua lands taken for surveys, land was taken for railway purposes at Okahukura and Taumarunui, and other lands taken for communication, recreation, conservation, scenic purposes and defence. Further particulars of these additional claims will be provided.

9 **GENERAL**

- 9.1 **THAT** the Waimarino and other acquisitions within the Rohe Potae were contrary to the agreement for the opening up of the district. It was 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 Crown had notice that the title was in dispute, and that tribal interests were not represented, however it still purported to purchase interests from individuals.
- (e) That by dealing with some and not others, the Crown exacerbated a dispute amongst the people and caused some to sell rather than miss out.
- (f) That in a climate of increasing dissension caused by the actions of the Crown some Maori sold to demonstrate their right to the land.
- (g) That by buying ahead of the Native Land Court determinations, the Crown prejudiced the Native Land Court proceedings, giving greater weight (and resources) to the views of those who had sold as against the non-sellers.
- (h) That that land was sold by the wrong people.
- (i) That the effect of the sale was to leave some hapu landless.

- (j) 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.
- (k) That the purchase price (if paid) was in any event, inadequate.
- (l) 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.
- (m) The Crown has not returned land acquired by it for certain purposes including railway purposes after the purpose ceased to exist.
- (n) That those Chiefs not submitting names of Hapu members in objection to the process were penalised by not being included as owners

9.3 WITH specific regard to the Crown's acquisition of the Waimarino Block it is claimed that the Crown did not act in good faith in that:

- (a) when Maori Land Court determined ownership it made the land inalienable except by lease.
- (b) the whole block was alienated and reserves that were awarded by the Native Land Court did not have regard for the local Maori occupation, thereby breaching the Treaty principle of protection.

- (c) not all persons were paid.
- (d) the Native Land Court legislation enabled, in the Waimarino Native Land Court investigation, a subversion of tribal land-holding.
- (e) chiefs and hapu who would not supply list of names and who were not at their marae bases at the time were left out of the block.

10 RELIEF

- 10.1 THE** return of the lands, forests and resources wrongfully acquired.
- 10.2 THE** return of other Crown lands, forests and resources by way of compensation.
- 10.3 COMPENSATION** for exclusion from the lands and resources wrongfully acquired.
- 10.4 A S** 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.
- 10.5 A N D** such additional or alternative interim relief and compensation as may be proposed at hearing by the claimants.
- 10.6 SUCH** further relief as the Tribunal considers appropriate.

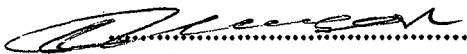
11 PROCEDURE

- 11.1 THE** purpose of this Statement of Claim is to identify in general terms the grievances and Treaty breaches in respect of the acquisition by the Crown of large areas of land, inter alia for railways purposes, within and near the Rohe Potae.

11.2 IT will be further amended on the basis of further information and research to be undertaken, and as the claims and requirements of claimants are made known.

11.3 IT does not replace the specific claims under WAI 48 inter alia which have been filed, to which reference is also made.

DATED this day of 1992


.....
J M Dawson
Counsel for Claimants

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For Attention: Chief Judge Durie,
Chairperson

Claim Manager
P T Harman

And to: Crown Counsel
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And to: New Zealand Railway Corporation Ltd
(Mr Keenan)