OFFICIAL

Wai 1130 #1.2.2(a)
Wai 37 #1.1(f)
Wai 933 #1.1(e)
Wai 1196 #1.1(c)

In the Waitangi Tribunal

Wai 37, 933, 1196

Under	**The Treaty of Waitangi Act 1975**
In the Matter of	**The National Park Inquiry (Wai 1130)**
And	
In the Matter of	**The claims to the Waitangi Tribunal by: Margaret Makariti Poinga, Terrill Temanuao Campbell and Alec Philips; and Merle Maata Ormsby, Daniel Ormsby, Tiaho Mary Pillot and Manu Patena, for and on behalf of themselves and Ngati Hikairo**

Amended Consolidated Statement of Claim for Ngati Hikairo

Dated 15 September 2006

KensingtonSwan
LAWYERS
89 The Terrace PO Box 10246 DX SP26517 Wellington
Telephone (04) 472 7877 Facsimile (04) 472 2291
Solicitor Acting: D A Edmunds

Counsel: R P Boast/R J Wakefield/J J Lang

051590168 VAC

Table of Contents

May it please the Tribunal:

A Introduction

1 Claimants

1.1 The claimants are:

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

b. Merle Maata Ormsby, Daniel Ormsby, Tiaho Mary Pillot and Manu Patena (the named claimants for Wai 1196).

1.2 The claimants claim for and on behalf of themselves and Ngati Hikairo.

1.3 This statement of claim replaces and incorporates the earlier statements of claim filed under the Wai numbers 37, 933, and Wai 1196.

1.4 The Ngati Hikairo lands straddle four different inquiry districts: Taupo (Central North Island), Whanganui, King Country and National Park. The National Park inquiry is the most important of these inquiries to Ngati Hikairo as it incorporates the largest portion of their rohe and the majority of their significant areas of interest.

B Background

2 Ngati Hikairo

2.1 Ngati Hikairo is a people of the south Taupo region. The principle Ngati Hikairo marae are located between lake Rotoaira and the slopes of Mount Tongariro, at Papakai and Otukou. A further Ngati Hikairo marae is located at Te Rena.

2.2 Ngati Hikairo recognise and acknowledge their whanaungatanga links to Ngati Tuwharetoa.

3 Ngati Hikairo Rohe

3.1 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 Ruapehu, returning to the summit of Tongariro.

3.2 This area includes all those blocks known as the Okahukura Blocks, the Taurewa Blocks, the Oraukura Blocks, the Whangaipeke Blocks, the Ngapuna Blocks, the Rangipo Blocks and the Kaimanawa Blocks. The area 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, Ruapehu and Ngauruhoe.

3.3 According to Ballara, Ngati Hikairo was traditionally settled at Hautu, Papakai, Okahukura and Taurewa as well as at Rotoaira and the Rangipo Plains. [1]

3.4 The claimants represent the descendants and rightful successors of the Rangatira and those people who were the tangata whenua and exercised rangatiratanga over these lands and waters. Within this area, Ngati Hikario held numerous kainga, urupa and waahi tapu and sites of significance for Ngati Hikario.

3.5 Blocks within the National Park inquiry district in which Ngati Hikairo has interests recognised by the Maori Land Court include (but are not necessarily limited to):

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

3.6 Blocks within the Taupo inquiry district in which Ngati Hikairo have interests recognised by the Maori Land Court include (but are not necessarily limited to):

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

4 Overview of the claim

4.1 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.

4.2 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.

4.3 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.

C Crown Treaty Breaches

5 Native Land Court

5.1 The Crown has a duty to actively protect Maori, in particular to protect the taonga of their land, as set out in article 2 of the Treaty. 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.

[1] Angela Ballara, *Tribal Landscape Overview*, pp 134-5

5.2 The Native Lands Acts, and in particular the Native Lands Act 1873, facilitated individual dealing and facilitated Crown purchase and alienation of Ngati Hikairo lands. The relevant Native Land legislation is set out below:-

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 New Zealand Settlements Act 1863, although not having direct effect on Ngati Hikairo lands, was nonetheless a 'warning' to them to co-operate with the Crown 'or else'. The threat of land confiscation if they showed resistance was a very real and forceful one;

h. 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;

i. 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;

j. 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;

k. 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;

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

m. 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.

5.3 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 paragraph 3 above.

5.4 Ngati Hikairo were unable to pay for the costs of the survey of their lands due to general impoverishment. 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. Examples of land taken for survey costs can be seen in the Taurewa and Ohuanga blocks.

5.5 General concerns about the Native Land Court process and in particular with respect to the Tauponuiatia block was the speed at which it passed through the Court and the fact that many people were not aware of or missed out on presenting at the hearings. This can be seen by the number of appeals for the re-hearing of the Okahukura block around 1887.[2]

5.6 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.

5.7 Maori were forced into the system of attending Native Land Court hearings. Rejection of the Native Land Court and failure to attend hearings was to risk exclusion from decisions whether made inside that forum, or reached outside in the discussions that often took place at the same time.[3]

5.8 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 [4]

5.9 Problems also arose when two or more important Native Land Court hearings were scheduled at the same time and key rangatira were unable to attend certain important hearings.[5] This was certainly true of the scheduling

---

[2] Stirling, *Nineteenth Century Overview*, p. 1348.
[3] Anderson, *Tongariro National Park*, p 229
[4] Bruce Stirling, *Taupo-Kaingaroa 19th Century Overview*, pp896-897, 923
[5] Anderson, *Tongariro National Park*, 230

of the Tauponuiatia hearings which many people complained they could not attend because they were involved in other court cases held at the same time.

5.10 In some instances (for example the Tauponuioatia block) the Crown favoured certain people over others; for example, rangatira (such as Te Heuheu) were treated by the Crown as if they 'ruled' and could speak on behalf of all the hapu that made up the wider tribal entity. Other rangatira were seen as having no independence of political action, and where they did pursue a contrary course, Crown officials saw them as having no wider political legitimacy. [6] Consequently, the awards of the Native Land Court did not reflect the true interests of the Maori owners.

Tauponuiatia/ Block Surveys

5.11 Crown agents encouraged the survey of the Tauponuiatia block[7] because it suited their own interests to open up the Rohe Potae district for railway and other purposes.

5.12 The signatories to the Rohe Potae compact in December 1883 had agreed only for an external survey of the Tauponuiatia block to proceed. However, despite this lack of consent, the government proceeded to survey lands for railways and roads.[8]

5.13 Ngati Hikairo lands were included with the Tauponuiatia block. The survey of this block caused considerable surprise and concern for the tribes whose land was included in and adjoined the Tauponuiatia block, including Ngati Hikairo.[9]

5.14 The surveys would later have to be paid for through land sales even though the Maori owners had not consented to them.

5.15 The surveys themselves were often inadequate and were done in an inefficient manner.[10]

5.16 Ballance and Grace came up with a plan of a single iwi claim to the Tauponuiatia lands instead of the existing 108 claims which had already

---

[6] Anderson, *Tongariro National Park*, p 39.
[7] Anderson *Tongariro National Park*, 233
[8] Stirling, *Nineteenth Century Overview*, p. 823.
[9] Anderson *Tongariro National Park*, p 233.
[10] Stirling, *Nineteenth Century Overview*, p. 832.

been filed. This plan was ultimately designed to serve the needs of the settlers and the government. Ngati Tuwharetoa had already filed a claim for the whole of the Tauponuiatia block which conflicted with 107 out of the 108 other claims. Therefore Ngati Tuwharetoa responded favourably to the proposal that was put to them by Grace. Ballance himself had the power, although he was not a Land Court judge, to set aside the other 108 claims and instead to promote a single Tauponuiatia claim led by Ngati Tuwharetoa.[11] Thus the judicial process was being controlled by government policy.

5.17 The Tauponuiatia block passed through the court extraordinarily quickly for a block of its size. Most of the agreements about who would go on the titles for the block were made outside the courtroom. 57 of the 78 blocks where ownership had been arranged in the Court were decided on an out of court basis.[12]

5.18 Following the passage of the Tauponuiatia block through the court, there was considerable criticism of the Tauponuiatia hearings with regard to title allocation and the eventual handing over of the mountains.

5.19 John Grace was the interpreter for the hearings although there was a conflict of interest in that he had interests in Tauponuiatia though both his Ngati Tuwharetoa wife and sisters-in-law, and also the role he had played with respect to the alienation of the Tauponuiatia lands prior to the Court sitting.[13] Crown agents played a role in the Tauponuiatia hearings and negotiations for the Tongariro National Park even though they had a conflict of interest.[14]

5.20 Other criticism was levelled at the fact that people were confused by *Kahiti* notices of Court sittings and thought that only succession and subdivision claims were being heard.

5.21 The pace at which the hearings were held meant that some people felt that they were squeezed onto the block lists, instead of having their claims

[11] Stirling, *Taupo-Kaingaroa 19th Century Overview*, pp. 884-885.
[12] Stirling, *Taupo-Kaingaroa 19th Century Overview* p. 938.
[13] Stirling, *Taupo-Kaingaroa 19th Century Overview*, p. 904.
[14] Anderson, *Tongariro National Park* p 58

properly heard.[15] Furthermore the novelty and unfamiliarity of the Court process caused confusion among claimants.[16]

5.22 A Royal Commission was set up to investigate the Tauponuiatia case, but the question of rights to the maunga was never reinvestigated.[17] The report of the Royal Commission showed the existence of considerable suspicion about the role of Crown agents in both the hearings and the purchase of the Tauponuiatia lands.[18]

5.23 As with the "gift" of the maunga, the Government chose to deal with Te Heuheu rather than other leading Rangatira in the area; it was in the interests of the government to accept and promote Te Heuheu's status and leadership in order to achieve what it wanted with respect to Tauponuiatia (survey and alienation).[19]

5.24 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.

5.25 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.

6 Gift of Maunga

6.1 In breach of the Treaty of Waitangi, including the duty of good faith conduct and the duty to be properly informed, the Crown facilitated the "gift" of the maunga to itself and the people of New Zealand, without proper consultation and attention to properly ascertaining which groups had interests in the maunga.

---

[15] Stirling, *Taupo-Kaingaroa 19th Century Overview*, p. 1003
[16] Stirling, *Taupo-Kaingaroa 19th Century Overview*, p. 1004.
[17] Anderson, *Tongariro National Park*, 25
[18] Anderson, *Tongariro National Park* p 74
[19] Stirling, *Taupo-Kaingaroa 19th Century Overview*, p. 877.

6.2 The mountain peaks (today known as Tongariro, Ngaruahoe and Ruapehu) assumed an important place in the matuaranga of Maori living in the area, including Ngati Hikairo.[20]

6.3 Maori of the area were strongly connected to the maunga. A number of high ranking rangitira had their names associated with Tongariro and Ruapehu[21], not simply the rangatira Te Heuheu.

6.4 The tapu character of the mountains was deepened by the burial of tipuna on them.[22] The claimants' tipuna Te Wharerangi was one of those tipuna whose name was associated with the maunga[23]. The claimants for Wai 37 and Wai 933 claim that their tipuna Te Rangihiroa is buried on the maunga.

6.5 The Crown acted as though the mountain peaks were entirely Te Heuheu's to dispose of as he wished. Because of Te Heuheu's loyalty to the Crown, the Crown treated him as though he was the ruler of the "tribe" and capable of speaking on their behalf without prior agreement with other rangatira and hapu.

6.6 The Crown chose to associate the maunga primarily with Te Heuheu because it favoured their agenda to disregard the interests of other groups, including Ngati Hikairo, in the maunga. Crown officials equated Te Heuheu's expressions of Ngati Tuwharetoa mana over the maunga as equating to absolute ownership and an individual right to alienate.

6.7 Furthermore, Crown officials treated Te Heuheu's "gift" as an outright transfer rather than as encompassing joint "ownership" of the mountain as between the Queen and Te Heuheu, as Te Heuheu intended.[24]

6.8 Complaints and protests were voiced about the transfer of the maunga and the Tauponuiatia proceedings but these complaints were ignored by the Crown.[25]

6.9 Ngati Hikairo were dispossessed of their mana over and association with the mountains as a result of Crown actions in facilitating the gift by Te Heuheu

---

[20] Anderson, *Tongariro National Park*, p 12
[21] Anderson, *Tongariro National Park*, p 12
[22] Anderson, *Tongariro National Park*, p 224
[23] Anderson, *Tongariro National Park*, p 224
[24] Anderson *Tongariro National Park*, p 231
[25] Anderson *Tongariro National Park*, p 77

to the nation. Today Ngati Hikairo's association with the maunga which was formerly central to their history and identity, has been marginalized.

7 Tongariro National Park

7.1 In breach of the Treaty, in particular the duties of active protection and good faith conduct, the Crown compulsorily acquired land for the purposes of a National Park. Furthermore, as with the gift of the maunga, the Crown did not give proper regard to the competing claims of different rangatira and hapu over the lands that were to eventually make up the park.

7.2 Crown policy in relation to scenery preservation and public access to wilderness spaces in New Zealand did not take account of Maori perceptions of land and nature, and did not allow for the on-going habitation and resource use of the land and resources by Maori.[26]

7.3 Care and management of the Tongariro National Park ("the National Park" or "the Park") did not take account of the kaitiaki role of Ngati Hikairo and other Maori; a variety of other groups were favoured over the voice of Maori in relation to the running of the National Park and the creation of Crown policy.

Creation of National Park

7.4 Because some owners of lands intended to make up the Park did not endorse the conveyance of the park lands to the Crown, the Crown resorted to compulsory powers of acquisition by virtue of the Tongariro National Park Act 1894. The creation of the National Park was closely tied to the Crown's desire to open up the Rohe Potae.

7.5 By virtue of the above Act, native title could be deemed extinguished and compensation to owners then ascertained by the Native Land Court with or without the consent of the Native owners. Maori therefore had little option but to accept payment for the areas of their land falling within the boundaries of the park as described by the Tongariro National Park Act.[27]

---

[26] Anderson *Tongariro National Park*, p 238
[27] Anderson, *Tongariro National Park*, p 236

7.6 Expansion of the park's boundaries over the decades that followed this Act involved the incorporation of blocks acquired at an earlier time, as part of general Crown purchase operations, rather than specifically for the park. These were incorporated into the park with out any offer back to Maori.

7.7 At the end of WWI, the Government took steps to expand the park and introduced the Tongariro National Park Act 1922.

Management of National Park

7.8 As a result of Crown policy, Maori relationship to their lands and customary resources has been severed. Maori have been distanced from having a real voice and sense of care and responsibility in relation to the lands that make up the National Park.

7.9 Management structures and plans for the management of the mountains and the national park has served to distance Maori relationship to the maunga. The management of the park and the maunga focuses on preservation and recreational development for visitors to the park, not the cultural associations of the local people.[28]

7.10 The National Parks Act 1980 is the principal legislation from which national parks management policy is derived. The Act made no reference to the Treaty of Waitangi and Maori involvement in policy making was limited.[29]

7.11 In 1987 the Department of Conservation was set up under the Conservation Act 1987. This government department had responsibility for the management of lands for the conservation and administration of the National Parks Act 1980. Section 4 of the 1987 Act provided that the Act should be interpreted so as to give effect to the principles of the Treaty of Waitangi. This immediately created an area of potential conflict, as between DOC's concerns regarding conservation and preservation, and Maori interests in developing their lands within the National Park.[30]

[28] Anderson, *Tongariro National Park*, p 226
[29] Bayley and Derby, Tongariro National Park Management from 1980 to the Present, p. 6.
[30] Bayley and Derby, p. 6.

7.12 The Tongariro National Park Management Plan 1989 which remained in place until 2002, had little mention of Maori involvement apart from acknowledging the historical relationship with Ngati Tuwharetoa.[31]

7.13 Ngati Hikairo are currently under discussion with DOC regarding guiding on the Tongariro Crossing as they currently do not have an explicit and exclusive role in this practice due to park management.[32]

7.14 There is also a concern that the park management has been consulting solely with Ngati Tuwharetoa and Ngati Rangi and not with other groups as they were not aware that they claim manawhenua over the mountain region.[33]

8 Crown Purchasing

8.1 The system of Crown purchasing was unfair to Ngati Hikairo and in breach of the principles of the Treaty, in particular the duty of active protection of the Maori taonga of land, and the duty of good faith conduct. The Crown failed to establish adequate protection mechanisms for Maori or alternatively ignored or circumvented those that did exist.

8.2 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. As a result, Ngati Hikairo suffered through the loss of their ancestral lands and also because the development potential of this key resource was lost to them, and led to a seriously disadvantaged socio-economic position.

8.3 The whole thrust of the Crown's purchasing policy was towards outright possession of lands at the cheapest possible price, even when Maori made it clear that they wished only to lease their lands.[34] The assumption was always that ultimately the freehold title should pass to the Crown.[35]

8.4 Maori land was acquired by virtue of individual payment (more particularly where there was community opposition to sale), successive partition, and

---

[31] Bayley and Derby, p. 11.
[32] Bayley and Derby, p. 33.
[33] Bayley and Derby, p. 33.
[34] Anderson *Tongariro National Park*, p 232
[35] Anderson, *Tongariro National Park*, 120

survey liens.[36] Indirectly, the Crown used a variety of mechanisms to acquire land: under public works and scenery preservation legislation, by manipulation of restrictions on alienation and by neglect of owner interests.

8.5 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.

8.6 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 (an example of which can be seen with respect to the Ohuanga and Taurewa blocks);

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.

8.7 Substantial areas of blocks awarded to Ngati Hikairo by the Native Land Court were subsequently purchased by the Crown. The Crown acquired substantial areas of the Hautu, Okahukura, Taurewa, Tawhai, Ohuanga, Papakai and Rangipo blocks and other blocks within Ngati Hikairo's rohe.

8.8 The Crown allowed its agents to pay advances to individuals. These advances were then charged against the 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

[36] Anderson *Tongariro National Park*, p 237

sell land in order to repay the Crown. There were many early advances made over the Okahukura block.

8.9 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.

8.10 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.

8.11 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. Examples of partitioning and fragmented titles can be seen in the Okahukura block which was eventually subdivided into 20 pieces, but also in the Ohuanga, Papakai and Tawhai blocks.

8.12 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. The price for the Okahukura block was dictated by the Assistant Surveyor-General and the Native Department who were not the people who were actually selling the land. They offered the owners roughly one-third less than what the land was worth as a result.[37]

8.13 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.

Okahukura Block

8.14 Before Crown purchasing began, the Okahukura block was about 82,000 acres lying beneath Tongariro and to the West of Rotoaira. Following the Tauponuiatia hearings in 1887, the block had been split into 20 pieces.[38]

8.15 The block is an area in which various rangatira and hapu asserted customary rights and control, it was a contested area. [39]

8.16 Te Heuheu bought the block before the Native Land Court on 3 February 1886. Ngati Hikairo were listed as a 'hapu' of Tuwharetoa to which the land would be awarded. The block was cut into six partitions – Ngati Hikairo were to be awarded the main Okahukura block consisting of 63,278 acres along with Ngati Rakeipoho, Ngati Pouroto and Ngati Te Mahau.[40]

9 Native Land Policy

9.1 The Crown has a duty to actively protect Maori, in particular to protect the taonga of their land, as set out in article 2 of the Treaty.

9.2 Through the operation of the native land policy the Crown sought to restrict Maori owners' use of their land and to facilitate the ultimate 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 principles of active protection and good faith conduct.

9.3 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. As a result, Ngati Hikairo suffered through the loss of their ancestral lands and also because the development potential of this key resource was lost to them, and led to a seriously disadvantaged socio-economic position.

9.4 The Crown imposed restrictions against alienation of Maori land to private interests, under general native land legislation, to ensure eventual transfer of

---

[37] Stirling, Nineteenth Century Overview, p. 1340.
[38] Stirling, *Taupo-Kaingaroa 19th Century Overview*, p. 1307.
[39] Stirling, *Taupo-Kaingaroa 19th Century Overview*, p. 1306.
[40] Stirling, *Taupo-Kaingaroa 19th Century Overview,* p. 1332.

Maori land into the hands of the Crown.[41] The Crown applied title restrictions to preserve lands that might be required by it in the future.[42]

9.5 In some instances land was acquired for one purpose but not returned to the owners when it was not then used for the purpose for which it was acquired. Instead, it was used by the Crown for another purpose.[43] For example, in some instances, land that was eventually designated as a scenic reserve was originally acquired for another purpose.[44]

9.6 Scenery preservation Acts placed restrictions on Maori ability to deal with their lands. Blocks in Maori ownership with native timber were targeted for acquisition under scenery preservation legislation to provide a scenic vista along tourist routs, or for the protection of water catchment, or preservation of species.[45]

9.7 In the case of scenic lands, one of the areas focused on by the Crown was the area around Mount Pihanga and Lake Rotoponamu[46], within the Ngati Hikairo rohe. This area was originally designated as a scenic reserve (Pihanga) but was also brought into the National Park in the 1970s.

9.8 Attempts by Maori to utitlise their land blocks commercially were thwarted by restrictions and delays in departmental response, the Crown inhibited Maori ability to make private arrangements in relation to the use of their land.

9.9 At Pihanga the Crown relied heavily of restrictions against private alientation that had been placed on the title under the 1909 Native Lands Act and which provision was carried over into subsequent legislation.[47]

9.10 Restrictions could be kept in place for many years, and lifted selectively. In the case of the area around Pihanga, the Crown lifted its restrictions to suit its own development purposes (for example, for the Tongariro Power Development).

---

[41] Anderson, *Tongariro National Park*, p 237
[42] Anderson *Tongariro National Park*, 128
[43] Anderson *Tongariro National Park* p 237
[44] Anderson *Tongariro National Park* 146
[45] Anderson, *Tongariro National Park* p 121
[46] Anderson *Tongariro National Park*, 146
[47] Anderson *Tongariro National Park* 182

9.11 Maori were prevented from having the opportunity to develop and utilise their lands as they say fit. Vital years for Maori development were lost as a result of Crown restrictions and delays.

10 Rohe Potae

10.1 In breach of the duty to actively protect Maori and to conduct itself in good faith, the Crown failed to honour the Rohe Potae compact, and disregarded the clearly expressed desires of Maori leadership to maintain their autonomy over their lands and toanga. Ultimately, the Crown's disregard for the Rohe Potae led to the Tauponuiatia block being passed through the Native Land Court.

10.2 The Rohe Potae leadership was focused on avoiding the Native Land Court system and its accompanying ill effects. In response to this the non-Waikato tribes of the Kingitanga (including Ngati Hikairo) attempted to form a protected area which would comprise all their lands still in communal title.

10.3 Rohe Potae leaders did not want the Native Land Court and desired government recognition of their own self-management and intention to lease rather then sell land. The Rohe Potae leadership desired a more equitable system of land administration in which Maori had greater control over their own affairs. They were not contrary to the building of roads and a railway through the district, but wanted these to be on their terms.[48]

10.4 Crown policy was focused on breaking open the interior which was held shut by the Kingitanga. The Crown wanted to undermine the hold of the Maori King.[49] In particular, the Crown was motivated to open up the Rohe Potae in order to put through the main trunk railway.[50]

10.5 The Crown refused to acknowledge any pan-tribal voice where its dealings with the Rohe Potae alliance were concerned. This had the effect of undermining the wider political unity and capacity of the Rohe Potae leadership to work together to control the opening of the Rohe Potae.[51] The Crown sought to undermine Maori political unity so that it could serve its

[48] Anderson, *Tongariro National Park* p 52
[49] Anderson *Tongariro National Park*, p 232
[50] Anderson, *Tongariro National Park*, p 51
[51] Anderson *Tongariro National Park*, p 54

own purposes and open up the Rohe Potae area for settlement and the passage of the main trunk railway line.

10.6 Although the Rohe Potae leadership eventually with the Crown agreed that the Tauponuiatia lands could go through the court in one large block, the intention was to deal with any subsequent internal allocations themselves. Any future alienation was intended to be by lease and not by sale. Government actions in the form of the Native Land Court and Crown purchasing techniques undermined these basic goals.[52]

10.7 The Rohe Potae alliance sought a single title to their lands with any subsequent division was to be managed by Maori outside the Native Land Court. Thus, the eventual Tauponuiatia hearings process was as a breach of that understanding.[53] The Crown disregarded the Rohe Potae compact for the passing of the Tauponuiatia block through the land court. As a result, this enormous area of land was quickly partitioned off and alienated from Maori ownership, as a result of Crown purchasing devices.

11 Forestry

11.1 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 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.

11.2 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.

---

[52] Anderson *Tongariro National Park*, 232
[53] Anderson, *Tongariro National Park, p* 56

11.3 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.

11.4 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

11.5 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.

11.6 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.

11.7 These blocks contained indigenous forests and were blocks in which Ngati Hikairo had interests. They were therefore prejudicially effected by the Crown's legislative actions listed at para 12.4 (a) to (f) above.

11.8 The Taurewa blocks were subject to prohibitions which prevented them being sold to anyone else other than the Crown.[54]

Lake Rotoaira Forest Trust

11.9 The Lake Rotoaira Forest was established in 1973 and is closely linked to the Lake Taupo Forest scheme which was established in 1969. The Forest was established through the leasing of Maori land to the Crown.

11.10 Huge tracts of undeveloped hapu lands, much of which had had outstanding rates and absentee owners, were transferred to the Rotoaira Forest Trust.

11.11 The Crown was concerned to obtain the land around the Lake Rotoaira and convert this to foresty to stabilise the soil, thereby reducing the risk of erosion that could put the Tongariro Power Development Scheme at risk, and so was a driving force behind the establishment of the Lake Rotoaira Forest Trust and the development of the Lake Rotoaira Forest.

11.12 Through the establishment of the Lake Rotoaira Forest, the Crown was dictating to Maori the ways in which they should best use their lands, was converting them from their traditional usages and was steering the process towards goals (i.e the preservation of the power scheme) which would benefit the Crown more than Ngati Hikairo. Furthermore, Ngati Hikairo have been denied the opportunity to develop these lands in other ways that they may see fit.

---

[54] Berghan, Block Research Narratives of the Tongariro National Park District 1865-2000, July 2004, p. 336.

11.13 Exotic forestry leases and the Lake Rotoaira Forest Trust have been identified by the Tribunal as issues requiring further research (Direction 28 June 2005 #2.3.20).

Tongariro Timber Company

11.14 In 1906, south Taupo Maori, including Ngati Hikairo, entered into an agreement with the Tongariro Timber Company ("TTC") to implement a development plan involving the building of a railway by TTC, and the payment of royalties to owners, in exchange for the TTC having the right to remove timber from Maori land ("the Agreement").

11.15 The Agreement between TTC and the Maori owners involved a total of 134,000 acres of land, covering 28 blocks and up to 800 owners.[55] The Agreement was also intended to provide employment for local Maori building a railway and working timber, as well providing for the clearing of land for farming purposes.

11.16 Even though the Agreement was between a private company and the Moari land owners, the Crown was closely involved in the Agreement through its role as regulator.

11.17 The Crown used proclamations to prohibit private dealing over Maori land covered by the Agreement (as well as other lands in the south and west Taupo district). During this time, commercial logging was prevented, as was leasing of the land.

11.18 The Crown insisted that the local Maori District Land Board act as agent for the owners for the purposes of the agreement. The owners were not always consulted in relation to the various transactions made under the Agreement.[56]

11.19 From the start of the Agreement, TTC was significantly undercapitalized and as a result was unable to fulfill its part of the agreement. The railway was not built, timber was not harvested and royalties were not paid to the owners.[57]

---

[55] Walzl, *Maori and Forestry*, p 209
[56] Walzl, *Maori and Forestry*, p 239
[57] Walzl, *Maori and Forestry*, p 214

11.20 The TCC 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 TTC failed to honour its obligations, any monies outstanding would come from any royalties the beneficial owners could otherwise expect to enjoy.

11.21 These arrangements concerning the Egmont Box Company 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. This decision 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."

11.22 From 1918, the Crown began a land purchasing programme that aimed to acquire land for European settlement purposes. Land purchasing began despite the protests of owners in case the TTC agreement be undermined. In addition the Crown knew that those owners who were selling were doing so as a result of impoverishment caused in part by the non-fulfillment of the agreement.

11.23 In the face of continued failures by TTC to obtain finance, in 1929 the Crown eventually brought the Agreement to an end. The land continued to remain tied up and unable to be used by the owners for some years to follow as a result of the legal battle referred to above.

11.24 As a result of this failed agreement, Ngati Hikairo experienced socio-economic impact, and lost land as a result of a debt held over their tribal estate.[58]

11.25 Following a 35 year attempt to utilise its most important resource, Ngati Hikairo and the other owners had gained nothing. During this time their timberlands had produced no income. Rates and tax bills that accumulated over the period exceeded the amount of any royalties that were paid. The promised railway and the associated benefits that it would bring to Ngati Hikairo never eventuated.

---

[58] Walzl, *Maori and Forestry*, p 208

11.26 As a result Ngati Hikairo 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. Land loss resulted when impoverished individuals or those seeking a way out of the cycle of non-development sold their interests to the Crown.

11.27 Ngati Hikairo lost the opportunities for development that the scheme would have brought had it been carried through; including land clearance, building of infrastructure, employment and the raising of capital for land development.[59] The lands that were the subject of the agreement were locked up for the period of the agreement, unable to be utilised or developed by the owners. Ngati Hikairo and others missed out on an opportunity for advancement in a planned and structured manner as united community of interests.

12 Development Scheme

Taurewa Farm

12.1 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 Hikairo.

12.2 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.

12.3 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.

12.4 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.

---

[59] Walzl, *Maori and Forestry*, p 208

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

12.6 Landcorp Management Services Limited previously informed the claimants for Wai 37 that the Taurewa Farm was to be disposed of. Disposal of the Taurewa Farm before the settlement of the Ngati Hikairo claim would amount to a further breach of the Treaty.

12.7 This is an issue that the Tribunal has identified requires further research (Direction 28 June 2005 #2.3.20). We are therefore unable to plead this matter further at this stage.

13 Tongariro Power Development and Public Works

13.1 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 Public Works Act. The Crown has subsequently vested or transferred land to local authorities without consultation.

13.2 By Order in Council dated 29 October 1958, pursuant to s 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"). The Crown took land under the Public Works Act for the the TPD.

13.3 The TPD brought changes to a wide landscape, including land and waterways within the Ngati Hikairo rohe, in particular Lake Rotoaira has undergone significant change through the negative environmental impacts brought about by the development. The Crown failed to assess and acted in disregard of the social and cultural impacts the scheme would have on tangata whenua.[60] The Crown's implementation of the TPD gave no consideration to Maori tikanga, and did not adequately consider the negative environmental, cultural and spiritual impacts of the scheme on Ngati Hikairo.

---

[60] Walzl, *Tongariro Power Development*, p 156

13.4 Several thousand acres of land were acquired in the Rangipo and Okahukura districts for the TPD. Rotoaira Maori experienced changes in their access to natural environmental resources due to the effects of the scheme.[61]

13.5 Lake Rotoaira, of central importance to Ngati Hikairo, was of particular interest to engineers who were looking for potential hydroelectric schemes because of the large potential 'fall' (precipitation) between lakes Rotoaira and Taupo.[62] However, in order to fully exploit the potential of the scheme, more water was needed and this would involve harvesting water from the headwaters of the three largest rivers.[63]

13.6 Motivated by power shortages in the late 1950s, the Government approved the TPD scheme in 1958, before any comprehensive plan had been drawn up. The scheme in its earliest form was unveiled in 1962 and faced a great deal of opposition.[64]

13.7 Maori were particularly concerned with the loss of resources and sacred places from the construction associated with the TPD and the ownership and use of Lake Rotoaira. As a result, the Ministry of Works commissioned the Historic Places Trust to determine the location of sensitive sites. This fell far short of the sort of consultation that Maori had called for.

13.8 Lake Rotoaira was central to the success of the scheme, and yet the Crown did not own this resource. Therefore after extensive negotiations with the Lake Rotoaira Trust, it was the threat of a compulsory taking under the Public Works Act that forced the Trust to sign a Heads of Agreement on 30 November 1972. This agreement was 'as punitive as it could possibly have been' short of compulsorily taking.[65]

13.9 The mixing of 35 different sources of water diverted into the Lake has disturbed the mauri of the river by mixing rivers with different 'personalities'.[66] The diversion of water away from the Whanganui River

---

[61] Walzl, *Tongariro Power Development*, p 157
[62] Kirkpatrick et al, *Land Based Cultural Resources and Waterways and Environmentla Impacts (Rotorua, Taupo and Kaingaroa) 1840 – 2000*, p. 387.
[63] Kirkpatrick, p.388.
[64] Kirkpatrick, p. 394.
[65] Kirkpatrick, p. 397.
[66] Kirkpatrick, p. 401.

headwaters has reduced this river to a 'commodity' and has adversely affected trout levels.[67]

13.10 An important feature of the scheme was the role played by Lake Rotoaira as a storage centre for waters diverted from around the region. Lake Rotoaira was unique in its location and importance as a food source for local Maori and in the way that that the Crown had acknowledged from the turn of the twentieth century that it was a lake to be reserved for the exclusive use of its owners.

13.11 When ownership of the Lake was awarded to Maori, this also meant the exclusive right of the owners to derive revenue from fishing licenses provided to outsiders.[68] Lake Rotoaira and its fishery have been undermined by pollution and the impact of public works. Kaoro, trout, crayfish, freshwater snails and other kai moana are now much less plentiful in Lake Rotoaira.[69] Furthermore, as a result of the power scheme the owners of the lake have lost their rights in the lake which they previously fought to establish.[70]

13.12 The waterflow into the lake has increased by 20 times its natural waterflow. In 1997, NIWA conducted an investigation on the potential adverse effects of the TPD on the Lake. The report found that trout catch rates in the lake have declined by up to 70% since the 1970s. A further review in 1999 found that the size of the trout spawning run in 1998 was 40% less than in 1974 and that trout numbers had declined since the TPD. No causal link was established, although the report found that it was 'likely' that there was a link. The damming of the Poutu stream also effected access to the spawning ground.[71]

13.13 There has been a 600mm rise in lake levels wince the TPD scheme began. As a result, with the prevailing westerly winds, the swells of the lake are able to penetrate further inland. As a result, some beaches on the shoreline have disappeared.[72]

---

[67] Kirkpatrick, p. 402.
[68] Walzl, *Tongariro Power Development*, p 159
[69] Kirkpatrick, p. 410.
[70] Walzl, Tongariro Power Development, p 163
[71] Kirkpatrick, p. 409.
[72] Kirkpatrick, p. 404.

13.14 The environmental impacts of the TPD is a further issue that the Tribunal has identified as requiring further research (Direction 28 June 2005 #2.3.20).

13.15 Another major effect of the TPD was the alienation of Ngati Hikairo whanau from their Turangawaewae, causing the breakdown of the whanau/hapu structure.

13.16 Ngati Hikairo whanau homes and urupa were relocated to other lands in the rohe in order that the blasting of Huimako ("the Otukou Quarry") (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.

13.17 Local residents had to raise the money for their Crown imposed relocation as a result of the Quarry, themselves. [73]

13.18 The Ministry of Works used health and safety legislation so that they could quarry from Huimako cliff face. Crown agents claimed that the water supply at the local marae was contaminated from the urupa of the marae and no longer safe to drink. As a result of this purported contamination of the water supply, the marae had to be relocated, which served to facilitate the Crown's quarrying of the Huimako clifface.

13.19 The metal from the Otukou Quarry was used to metal the roads developed for the Tongariro Power Development Scheme. The working of the Otukou Quarry caused problems for local waterways, including the Wairehu stream. Water from the quarry works would eventually drain into the Wairehu stream.[74]

13.20 Members of Ngati Hikairo were issued letters stating that in order for them to retain employment with the Ministry of Works and Development and the

[73] Kirkpatrick, p. 410.
[74] Walzl, *Tongariro Power Development*, p 149 - 150

TPD, they had to accept the housing provided in the Turangi Township. This caused further breakdown of the whanau/hapu structure.

13.21 Before the TPD, the Marae community was a thriving, happy and loving environment to be raised in, and to be a part of. The Marae are now places to gather on occasion only.

13.22 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. The electricity resource which has been developed through the use of Lake Rotoaira and surrounding lands, has not benefited those who have suffered in order for the power scheme to get off the ground. Electricity is still very expensive for the inhabitants of the Rotoaira area.[75] Furthermore, although Ngati Hikairo are among those who own Lake Rotoaira, a crucial part of the TPD, they receive no share in the income or profits generated by the scheme.

13.23 According to 2001 New Zealand Deprivation Index, the South Taupo area falls into the '10th decile' most deprived socio economic areas of New Zealand. The people of Ngati Hikairo ... have become poor through the very mechanisms which allowed others to benefit from their resources.[76] This is mainly through the taking of land for the scheme which means that they cannot use it as capital for loans to pay for development and improvement schemes.[77]

14 Geothermal Resource

14.1 The Tongariro geothermal system falls within the rohe of Ngati Hikairo. According to Environment Waikato, there are outflows from this system at Ketetahi, Te Maari and the Tongariro summit. The system extends all the way to the Manawatu-Waikato region.

14.2 Ngati Hikairo's ownership and control over the geothermal resource has been removed and/or compromised as a result of Crown actions both pre and post 1950s, including legislation.

[75] Kirkpatrick, p. 416.
[76] Kirkpatrick, p. 416.
[77] Kirkpatrick, p. 416.

14.3 Ketatahi Springs ("the Springs") are a site of great significance to Ngati Hikairo. They were considered of great importance as they were renowned both locally and throughout the country for being a sovereign remedy for the healing of diseases.

14.4 Ngati Hikairo's interests in the Springs were not reflected in the Native Land Court's lists of owners. The Crown was unable to effect the purchase of the Springs despite many years of attempts at negotiation with the owners.

14.5 For many years (up until 1991), the Springs were openly accessed and used by people using the National Park, despite the Springs not being part of the National Park.

14.6 Rights to use geothermal pools and springs were allocated according to Maori customary law. Ngati Hikairo used geothermal resources as follows[78]:

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.

14.7 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.

[78] Richard Boast, *The Hot Lakes: Maori Use and Management of Geothermal Resources from the evidence of European visitors*, pp 114-121

14.8 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.

14.9 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.

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

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

14.12 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.

15 Railway

15.1 The Crown acquired large areas of land within the Rohe Potae, contrary to the agreement with the tribes concerned. Crown agents insisted that any payment for land required for the purposes of the railway line was contingent on the surrounding individual blocks going through the Native Land Court. This was to encourage the opening up and surveying of the Rohe Potae lands. The Rohe Potae leaders did not wish their lands to pass through the Native Land Court. [79]

15.2 The North Island Main Trunk Railway Loan Act 1882 made provision for raising a load of one million pounds to be spent on railway construction, including survey and land purchase.

---

[79] Anderson, *Tongariro National Park*, p 233.

15.3 The acquisition of land for railway was specifically provided for in the North Island Main Trunk Railway Loan Application Act 1886 (and its amendments). Sections 3 and 4 of this 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."

15.4 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".

15.5 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.

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

15.7 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).

15.8 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.

15.9 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.

15.10 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.

16 Environmental Issues

16.1 The claimants say that their lands and resources including wahi 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.

16.2 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.

16.3 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.

16.4 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.

1080 Poison

16.5 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 whanau/hapu and on two occasions, manuhiri attending tangihanga at the Marae;

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

d. 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;

e. 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 pellet at Taitaia Urupa while visiting her grandmother, Mary Te Rongopai Turner, a descendant of Te Rangihiroa, and first cousin of Te Huri Hokopakeke;

f. The claimants' tipuna worried for the future of their hapu because the very nature of the Act of poisoning Papatuanuku in this way would bring misfortune to the hapu.

16.6 While it is acknowledged that possums are a problem to indigenous and exotic forests ecosystems and control and eradication is supported, if an effective alternative to 1080 could be found, this would be preferable to tangata whenua.

16.7 Application of poisons, whilst they may be scientifically accepted, are culturally undesirable. Poisons entering the whenua and awa create much anxiety and concern for Ngati Hikairo.[80]

[80] Kirkpatrick, p 281 – 282

17 Waterways and Fisheries

17.1 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).

17.2 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'.

17.3 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.

17.4 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.

17.5 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

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

17.7 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.

17.8 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.

17.9 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.

17.10 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.

17.11 Ngati Hikairo's wish to preserve their customary rights to the Lake was recognised to a degree in 1938 when Parliament passed s 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.

17.12 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.

17.13 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).

17.14 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.

17.15 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.

Decline in Fisheries

17.16 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, as the trout feed on the native koaro. Hundreds of thousands of trout fry were introduced into the rivers of the Tongariro National Park, for recreational fishing, [81]

17.17 The Koaro population has been further severely depleted by the effects of the TPD Scheme. Species such as kokopu and koaro now remain in significant numbers only at Lake Rotoponamu, which was ultimately protected in the 1972. No where in the region are there sufficient numbers of native fish to sustain customary fishing practices.[82]

17.18 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

[81] Anderson, *Tongariro National Park*, p 226
[82] Anderson, *Tongariro National Park*, p 226

well as indigenous fish) as set out above therefore seriously impinges upon Ngati Hikairo's customary fishing rights.

17.19 Furthermore, as set out above, the TPD has had the effect of causing a significant decline in trout stocks, in addition to the decline in indigenous fish stocks. The TPD severely depleted the population of the indigenous fish koaro in the Lake.

17.20 The koaro was the main fishery during 1840 and up to the introduction of trout in the 1900's. Ngati Hikairo was renowned for their ability to "feed the people" at hui. The koaro of the Lake was an invaluable food source that was the key means of survival for members of the hapu living at the foothills of Tongariro.

17.21 Ngati Hikairo traded this resource with other hapu in exchange for bird hunting rights and other resources of other groups such as Ngati Turumakina, Ngati Turangitukua, Ngati Kurauia, Ngati Rongomai, Ngati Pouroto of Ngati Tuwharetoa, as well as hapu of other waka.

17.22 Ngati Hikairo 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 their people. Ngati Hikairo 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.

17.23 The various enactments of 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 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

17.24 On 9 August 1998 members of Ngati Hikairo, including Bon Turner ("the Defendants"), 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.

17.25 The customary right that the Defendants claimed they had was that they were gathering food for their family, namely that they were getting fish for their Uncle in Auckland. The Wairehu Stream where the Defendants were found is within the rohe of Ngati Hikairo and they had traditionally used the steam to fish in.

17.26 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.

17.27 The officer seized the five trout and a landing net and they 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.

17.28 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.

17.29 The Defendants were convicted and fined $750 each. 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.

17.30 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.

17.31 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.

18 Social Impacts

Tohunga Suppression Act

18.1 The 1907 Tohunga Suppression Act was aimed at suppressing traditional Maori forms of healing and use of knowledge in order that they should become more like Pakeha in all their practices.

18.2 The Act it an offence for 'Every person who gathers Maoris around him by practicing on their superstition or credulity, or who misleads or attempts to mislead any Maori by professing or pretending to possess supernatural powers in the treatment or cure of any disease or in the foretelling of future events, or otherwise ... is liable'.

18.3 Notwithstanding whether or not a person was actually prosecuted under the Act, the fact of its existence served as an warning that practices which went outside conventional Pakeha wisdom and ideologies would not be tolerated.

18.4 The creating of a criminal offence stigmatized traditional practices. The threat of the Act's enforcement therefore had a detrimental and suppressive effect on the cultural and spiritual practices of Ngati Hikairo.

18.5 As a result, much of the traditional knowledge was lost as it was no longer passed on as it had been previously. Examples of the types of knowledge that were lost are as follows;

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;

18.6 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

19 Treaty Breaches

19.1 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.

20 Prejudice to the Claimants

20.1 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.

20.2 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.

20.3 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.

20.4 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.

20.5 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.

20.6 As a result of Crown intervention Ngati Hikairo were dislocated from their traditional lands, wahi 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.

20.7 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

21 Apologies

21.1 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.

22 Extinguishment of Convictions and Recognition of Customary Rights

22.1 The Claimants seek recommendations from the Tribunal that:

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

b. 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:

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

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

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

22.2 The claimants request that the above recognition be explicitly recognised and provided for by statute.

23 Return of Land and Taonga

23.1 The Claimants seek recommendations from the Tribunal that:

a. 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:

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

ii. 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;

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

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

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

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

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

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

c. 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.

d. All taonga located during the Tongariro Power Development Scheme within the rohe of Ngati Hikairo be returned.

e. All taonga presented to the Government in Wellington, and taken to the Department of Conservation since 1987 be returned.

f. Crown owned water bodies within Ngati Hikairo rohe (including the bed, banks, and water in, under and adjacent to such water bodies) be returned and revested.

24 Compensation

24.1 The Claimants seek recommendations from the Tribunal that 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. Provide 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. Make such other remedies as the Tribunal considers appropriate;

e. Provide compensation to the Claimants for the loss of their economic base and lands including accrued loss of earnings;

f. Provide compensation for all costs involved in relation to endeavours by the claimant's ancestors to recover possession of the lands claimed; and

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

h. Provide compensation in respect of the Tongariro Power Development Scheme:

i. 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.

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

iii. 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.

iv. 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.

v. 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.

i. 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.

25 Cultural redress

25.1 The Claimants seek recommendations from the Tribunal that:

a. The mätauranga 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: 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 Members of the hapu be employed as Kaitiaki alongside the Department of Conservation, Environment Waikato and any other Crown Agencies relevant to the resources of the hapu 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.

26 Other Forms of Redress

26.1 The Claimants seek any other recommendations and/or redress the Tribunal thinks fit.

27 Amendment

27.1 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.