OFFICIAL

IN THE WAITANGI TRIBUNAL

Wai 898
Wai 2168

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Rohe Potae Inquiry

MEMORANDUM OF COUNSEL PROVIDING PARTICULARS TO BE ADDED TO AMENDED STATEMENT OF CLAIM
18 February 2013

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MAY IT PLEASE THE TRIBUNAL

Introduction

1. This memorandum of counsel is filed for and on behalf of Ben Campbell and Ngāti Urunumia ("the Claimants"), in relation to the *Ngāti Urunumia and Arapae lands claim* (Wai 2168). The memorandum of counsel is filed in response to the Presiding Officer's directions set out in the Memorandum-Directions dated 25 January 2013.[1]

2. In those directions the Presiding Officer requested that counsel "file details of the proposed amended FSOC". Those details are provided below.

3. As previously submitted, the present final amended statement of claim does not include particulars that set out the Claimants' specific Treaty claims. Whilst the present final amended statement of claim may suffice for the purposes of the Wai 2168 Treaty claim at the conceptual level, the Claimants would prefer a more accurate display of their grievances to be included on the record.

4. An important feature of the Treaty claims proposed below is that no other claimant in the Inquiry has raised these issues, neither on the Claimants' behalf nor in relation to the particular land interests referred to. Accordingly, it is submitted that the proposed claim amendments are not repetitive. Furthermore, if the leave being sought is granted, it is submitted that the proposed amendments will enhance the comprehensiveness of Te Rohe Potae inquiry.

5. The leave being sought is also necessary if we are to comply with the requirements of the Ministry of Justice's legal aid policy. It is understood that if aid is to be granted for claim-related work concerning the specific Treaty claims outlined in part below, then it would enhance the Ministry's disposal towards doing so if the proposed claims were particularised and not merely referred to at the conceptual level.

6. In the event that the leave being sought is granted, it is submitted that there will be no prejudice to any other party.

Claim Details to be Provided in the Proposed Amended Claim

Claimant Group Description

7. The Claimants instruct that the present final amended statement of claim does not describe them comprehensively enough and it does not accurately record who they are. In particular, their relevant hapu affiliations are not listed and this is important to them. It is acknowledged that there is procedure for amending the statement of claim in this respect without the need to file the

[1] Wai 898 #2.2.175

proposed amended statement of claim. Nevertheless, when read in conjunction with the information provided below, it is submitted that the deficient claimant group description adds to the need to set the record right in the manner proposed.

Kinohaku East 3 blocks

8. The Claimants' land interests are situated near Piopio and include the Kinohaku East 3 land blocks in the main. The Claimants' present interests in the lands are derived from their forebears' long-held customary interests. As a result of the Crown-sponsored alienation of their lands, just a small portion of the Claimants' traditional land base remains in their ownership today.

Crown Purchasing in the Kinohaku East 3 blocks

9. The Claimants would like to develop their Statement of Claim so that it properly reflects the significant land loss as a result of the Crown's land purchasing policies and tactics. At this present point in time, the Amended Statement of Claim dated 9 December 2011 contains no detail on this particularly hurtful time in the Claimants' history.

10. The Crown was particularly determined to acquire interests in the Kinohaku East 3 block due to the nature and comparative quality of the lands. Wilkinson described them to Sheridan as "some of the best land in the King Country".[2]

11. In the amended statement of claim, the Claimants wish to document the unfair purchasing tactics employed by the Crown. For instance, upon completion of the surveying of the Kinohaku East subdivisions, Sheridan instructed the Chief Surveyor to value them. Valuations were subsequently provided in circumstances where the Chief Surveyor did not set foot on or even sight the land blocks in question.[3]

12. This valuation process that Sheridan promoted was geared towards the acquisition of good quality Maori land at cheap prices for on-sale by the Crown at much higher prices.[4] The concept of "fair market value" was anathema to the Crown and this constitutes a flagrant Treaty breach.

13. Boulton claims that a "profit equation" was at the heart of the Crown's land acquisition programme of Kinohaku East blocks.[5] Parker shows that Kinohaku East blocks were sold soon after being purchased by the Crown for many times the purchase price paid.[6] It is submitted that this researched evidence warrants the filing of an amended statement of claim that is focused on the

[2] Boulton, *'Land Alienation in the TRP 1866-1908: An Overview'*, #A67, page 363.
[3] Ibid, page 364.
[4] Ibid, page 363-4.
[5] Ibid, page 363.
[6] Parker, *'Report on Crown Purchase Price, Value and Sale'* (Wai 898, #A95) and Appendix A (Wai 898, #A95(a))

Claimants' particular loss of their land interests and the significant prejudice they have suffered as a result.

Survey liens

14. In addition to purchasing the lands of Te Rohe Potae Maori through purchasing, the Crown acquired extensive areas of Maori land in lieu of survey liens,[7] including the Claimants' lands.

15. The Claimants were required to meet the cost of survey and so lands were set aside for sale as a means of meeting such costs.

16. There is evidence that the survey of the Kinohaku blocks was inaccurate and so a second survey had to be carried out. Hearn writes:

> *In such case the owners had no remedy, having to meet the cost of the original and defective survey and the subsequent survey despite the former having been carried out by government-approved surveyors, having been inspected by a government surveyor, and the plans having been passed by the government.*[8]

17. The survey of Kinohaku East in 1893 had proceeded ahead of triangulation thus adding to the cost. Unfortunately this also lead to inaccuracies with much of the survey work done, including inaccuracies with the surveyed boundary between the Kinohaku East and West blocks.[9] The landowners were most upset. They refused to allow the second survey until the government paid for it. The government responded by proceeding with the survey in any event and by raising the survey cost for Kinohaku East from £391 13s 11d in 1893 to £440 9s 4d in 1895.[10]

Arapae 2 - Board of Māori Affairs Management

18. The Arapae block was one of the Kinohaku East subdivisions. In 1952 the Board of Maori Affairs amalgamated the Patiti block with a series of Arapae blocks to form Arapae 2 and the Piopio development scheme.[11] Some of the Claimants land interests were included in Arapae 2.

19. The Piopio development scheme included an ambitious land clearance programme and there was a significant disparity between the per acre development cost and the disposal value. The scheme inherited a debt of at least £1100 when it began.[12] There were considerable farming losses for many years. By the end of March 1961, the development debt was £61,278. The

[7] Hearn, *'Maori, land and the Crown in TRP c 1900 to c1935'*, Wai 898, #A73, page 97.
[8] Ibid, page 99.
[9] Ibid, page 101.
[10] Ibid.
[11] Hearn, *'Land titles, land development, and returned soldiers'*, Wai 898, #A69, page 475.
[12] Ibid.

Crown began a share purchasing programme so that by 1966, the Crown owned approximately one-sixth of the total shares. These shares were re-sold to the owners in November 1984 at a cost of $227,000. Although a profit was turned in 1973-1974, the development debt was at $198000.00 by that time and so some owners were looking to sell.[13] Originally, settlement of the scheme was scheduled for 1970 but it did not eventually occur until 1988.[14] By the end of 1985, Piopio had an estimated total value of $1.7m while the owners' equity amounted to $1.6m.

20. Although it may be that "all's well that ends well", it is contended by the Claimants that the road to "success" need not have been as long nor as hard. The Claimants question the Board of Maori Affairs' financial performance and claim that more could have been done in this respect or done more effectively. Further, it need not have been such an exclusive process either, where the Claimants found that they had little or nothing to do with the land on a day-to-day basis.

Arapae A Block - Māori Affairs Department and Māori Trustee Management

21. The Arapae A block was also managed by the Department of Māori Affairs. It leased the land to Pakeha farmers as opposed to promoting the use and management of the land by its Maori owners. This approach limited the Claimants' opportunities to work their lands in paid employment. They were also denied the opportunity to develop farm and business management skills. Furthermore, the yields and benefits to the Maori owners from management of their lands by the Department of Maori Affairs failed to match those that were promised.

22. At a later stage, the management of Arapae 2 was taken up by the Office of the Maori Trustee, with similar results for the land owners. That office also failed to generate an appropriate level of revenue for the size and value of the land and the owners were excluded for many years from working their traditional lands.

23. In addition, both the Department of Māori Affairs and the Māori Trustee ignored pleas from the owners to protect the urupa and wahi tapu on the land. A pa site occupied part of the land in earlier times. Many sacred sites were desecrated in circumstances where government officials were aware of their existence but did nothing to protect them.

Arapae A6B - Public Works Taking

24. In 1956 land was taken from the Arapae A6B block for a roadway.

25. The owners were not consulted before the land was taken, nor were they informed that it was to occur.

[13] Ibid, page 476.
[14] Ibid, page 477.

26. They did not receive compensation for the taking.

Arapae A6A2A – Maori Land Court legislation deficiency

27. Arapae A6A2B was owned by the Campbell whanau. When Charles Campbell passed away the land was succeeded to by his children. A life interest was granted to Mr Campbell's second wife.

28. The legislation of the time allowed Mr Campbell's second wife to obtain a mortgage on the land that was confirmed by the Māori Land Court. Unfortunately the mortgage went unpaid and this led eventually to the land being lost.

29. The legislation was deficient because it allowed a non-owner to encumber the land in this way.

Conclusion

30. It is our submission that the particulars provided above support the need to amend the final statement of claim as it currently stands.

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