IN THE WAITANGI TRIBUNAL **WAI 898**
WAI 125

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of **Te Rohe Potae Inquiry** (WAI 898)

AND

IN THE MATTER of a claim by **Haami Whakataari Kereopa** and **Vivian Te Urunga Morell Kawharu** on behalf of Ngāti Koata (ki Whaingaroa), Ngāti Kahu, Ngāti Tahau, Ngāti Te Kore, Ngāti Pukoro, Ngāti Te Ikaunahi, Ngāti Tira, Ngāti Heke, Ngāti Rua Aruhe, Ngāti Hounuku, Paetoka and Ngāti Te Karu

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JOINT BRIEF OF EVIDENCE OF AUBREY TE KANAWA and MARLEINA TE KANAWA

(Land Administration Institutions)

DATED this 6th day of September 2013

RECEIVED
Waitangi Tribunal
6 Sep 2013
Ministry of Justice
WELLINGTON

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1. This is a joint brief of evidence of Aubrey Te Kanawa and Marleina Te Kanawa.

2. I, Aubrey Te Kanawa and am of Tainui, Maniapoto and Ngāti Porou descent. My primary education was at Te Kura Kaupapa Māori o Oparure followed by secondary school at Te Kuiti High School. I graduated from Waikato University with a Bachelor of Leisure Studies and a Bachelor of Management Studies. After graduating University I attained an internship with Tainui Group Holdings where I worked as a property manager at Te Awa. I have recently resigned to take up a fixed term position as manager for the Te Kōpua 2B3 Incorporation.

3. I, Marleina Hine Kahukura Te Kanawa and am of Tanui and Ngati Porou. I was the Secretary and the Treasurer of the Te Kōpua 2B3 Incorporation for 20 years, and am also the secretary of our whanau trust,

4. This brief of evidence is filed in support of Wai 125, being a claim filed on behalf of a number of hapū from Whaingaroa including Ngāti Koata (ki Whaingaroa), Ngāti Kahu, Ngāti Tahau, Ngāti Te Kore, Ngāti Pukoro, Ngāti Te Ikaunahi, Ngāti Tira, Ngāti Heke, Ngāti Rua Aruhe, Ngāti Hounuku, Paetoka and Ngāti Te Karu. Collectively, these hapū are known as “Tainui.”

5. Within the brief of evidence we will address the impact of Te Ture Whenua Māori Act on land administration institutions on Tainui whānau and hapū.

The impact on land administration institutions on Tainui whānau and hapū

6. Tuaiwa Rickard (our mother and grandmother) drummed into us that “you don’t own any land, the land owns you, you’re only guardians for your mokopuna” Therefore, we have a responsibility and obligation to retain our role as kaitiaki and to manage it in such a manner that benefits and at the same time guards it for the generations to come.

7. The total Tainui lands that remain in Māori ownership amounts to approx. 516.22 hectares (1275.61 acres). There are approximately 30 blocks, 10 administered by Ahu Whenua Trusts, 1 Māori Incorporation, 3 whānau trusts and 15 remain in Māori freehold title. In 1967 the blocks in which there were fewer than 4 shareholders was transferred to General title, which has caused some problems for whānau.

8. We will focus mainly on the issues surrounding the administration of Māori Freehold Land under the current Ture Whenua Māori Act and the Māori Affairs Act 1953. We will use the Te Kōpua experience as an example of the issues that are

faced by all the administrators of the meagre amount of lands at Te Whaanga, and Te Kōpua that are still in Māori ownership. Much of the original acreage has disappeared through a number of acts by Crown agents, which include the Māori Trustee and the Local Council who appear to have worked together to acquire Māori land, particularly at Te Whaanga. The story of the confiscation and eventual return of part of Te Kōpua at Whaingaroa has been well documented by Alexander in his report of Public Works Takings,[1] therefore we will only deal with a very short history of the block and the events that have occurred since its return.

9. Prior to the land being divided by the Native Land Court Te Kōpua was one block. The physical and spiritual relationship that our tūpuna had with the whenua was intertwined with no separation and they coexisted with it. They lived amiably together before they were forced, by the laws of this country, to name their boundaries and then compose a list of people entitled, a foreign concept to them. However, our tūpuna complied, agreed with boundaries, which of course were natural ones marked only by landmarks, and duly drew up their respective lists.

10. The lists drawn up included relatives who had had their lands confiscated during the Waikato Land Wars and sought refuge at Whaingaroa, as well as wives and husbands from other iwi. Te Kōpua was duly split up and renamed, Papahua, Te Kōpua 1 and Te Kōpua 2.

*Attached and marked with the letter **"A"** is a PowerPoint presentation that was prepared for the Te Kopua blocks.*

11. The marae, Miria Te Kakara, stood on Te Kōpua 2 and was partitioned and so the number 2 Block became Te Kōpua 2A and Te Kōpua 2B. It was about this time, as we understand, that Papahua was detached from Te Kōpua, despite objections from both Hounuku and Tairakena. The people in Te Kōpua 1 agreed to have their relative share interests allocated, whilst their whanaunga in Te Kōpua refused to have any shares allocated. A total of 88 people were named for the two blocks.

12. The first point here is that the Native Court forced a severance of the land and created a legal relationship with the whenua, which is not in line with the Māori philosophical viewpoint or that of ahikā. The people allocated to Te Kōpua 1, who were the descendants of Te Ata, Taioparenui and Pōtikitahi, chose to have relative shares allocated and in so doing created an unnatural relationship with their whenua.

[1] Alexander D, Public Works and other takings in Te Rohe Pōtae District pps 653-843

On the other hand, those at Te Kōpua 2, who belonged to Ngāti Hounuku, Te Ikaunahi, Ngāti Huia and Mauriri, continued to hold the land in tribal ownership. The Native Land Court shareholding system is a foreign mechanism of determining ownership or relationship to land and changed it from one of co-existing with the whenua to holding a legal relationship with it. The impact of this is that only shareholders can have a legal interest in the land. A parent may have a legal right but their children do not until such time as the parent either makes a gift or dies. Children then have to go through a process of succession and the shares of the parent is then fragmented until such time as it becomes so small that the unnatural relationship with the land becomes valueless to the owner. The fractional shares were often taken over by the Māori Trustee and then on-sold. The Crown created the system, whereby they could eventually gain the power to sell the Native Lands that they were entrusted to protect. Native Land laws have limited the relationship to land to only those that hold title representation of ownership which doesn't equate to the Māori concept of determining relationships, that is ahikā v ahimātao relationship.

13. The land taken under emergency all of Te Kōpua 1, Te Kōpua 2A and part of Te Kōpua 2B. When the Crown finally agreed to return the Te Kōpua land, only part of Te Kōpua 1 was returned. The iwi asked that it be returned into Tribal ownership with no shares. Mentioned earlier was the fact that all of those in the original Te Kōpua 2 block refused to take shares. Those shares were allocated, without their consent, in 1942, after the land had been taken. Although the iwi had asked for the land to be vested in the tribe, the request was refused because under the Māori Affairs Act it had to be returned to an approved entity. It was eventually vested in a 438 Trust, now an Ahu Whenua Trust, with the beneficiary shareholders being those who were named as shareholders at the time that the land was taken. By doing so meant that successors had to reapply to the court to have their successions to tūpuna recognised. The land was divided once again to add Te Kōpua 3 and Te Kōpua 4. Te Kōpua 3 is a 1.7 hectare strip bordering the Incorporation land and the roadway. There are 461 shareholders and a total of 121,500 shares in this block. Te Kōpua 4 is a 25.85 hectare block which is a combination of the residue of Te Kōpua 2 and a part of Te Kōpua 1. There are 552 beneficiaries and 154,000 shares.

14. A Māori Incorporation was set up in 1963 to manage what was left of the Te Kōpua 2 lands, a subdivision of 28 sections was created and those sections leased, under a Māori Affairs lease arrangement. A large part of the land returned was in fact Te

Kōpua 2 and only a small portion belonged to the original Te Kōpua 1. It is our contention that the court should have returned Te Kōpua 1 to those entitled and Te Kōpua 2 to those that were entitled, rather than blend them. All of the owners in Te Kōpua 3 are shareholders in the incorporation and it would have been more prudent to amalgamate Te Kōpua 3 with Te Kōpua 2B3 rather than Te Kōpua 1 and 2.

15. An impact of the land being confiscated was that people had to leave Whaingaroa. Much of their land at Te Whaanga had been leased and in order to survive most left. However, those who stayed and remain took the responsibility of trying to reignite the fire on Te Kōpua, which has only been partly successful, due to their diminished status as ahikā under the law. The return of land to a Trust limited what could be done with it and of the original trustees only one could be regarded as ahikā roa, having had an unbroken relationship with the whenua. However, the other two could also claim an ahikā status due to the fact that one of their relatives also remained and lived at Te Kōpua. No compensation was ever received for Te Kōpua and there were no buildings. The marae was never replaced and when the need for one became dire a meeting was called to decide where to build one, despite the fact that land at Te Kōpua that had not been taken had been set aside. Despite the majority of people voting that it be erected at Te Kōpua the Māori Affairs decided it should be built at Rākaunui and where the Ngāti Hounuku of Tahinga had no land rights. The impact of that action has meant that many of the descendants have now become disconnected with their whenua at Te Kōpua.

16. One's identity and culture, in a Māori context, is inextricably connected to the relationship to land, whakapapa and the relationships to others around you. The management of those relationships cannot be dictated but are built on a platform of respect, reciprocity, manaakitanga and kaitiakitanga. However, under the Ture whenua Māori Act, structures are imposed on us. The structures under which we must operate manage our lands have impacted greatly on the relationship one has with their land because it has created a relationship disconnection, not just with the whenua but with each other.

17. The vested Trust was limited in the kind of activities that it could carry out and in order to begin rebuilding finance was needed. The ability to raise finance from normal lending institutions was hampered by the fact that the lending institutions would not lend to owners in multiple Māori freehold lands. Even Te Puni Kōkiri was unable to finance a building so my grandmother managed to secure a suspensory loan from them for the Charitable Trust, using her own house as collateral. The loan had the

condition that the building was to be used for a Kōkiri centre, which has managed by the Charitable Trust to the present day.

18. The administration mechanisms and options for Māori land are limited. Under the Ture Whenua Māori Act the choices of administrative structures for Māori land is dictated and are limited and restrictive. In comparison, the Companies Act 1993 is far more flexible and any business may establish their structure fit for the purpose according to how they see fit. Under the Ture Whenua Māori Act the kind of structures that we may use are dictated for us creating an inequity at law.

19. The imposition of administrative structures has impacted on our people in that it has changed the way they are able to interact with the whenua. There are layers of legislation that all administrative bodies need to comply with. Māori , however, have a unique status in that they have extra legislation to comply with, namely the Ture Whenua Maori Act, The Land Court rules 2011, Maori incorporation constitution regulations 94, Tax laws, Trustees Act for Trusts, RMA as well as dealing with Local Government compliance and rules.

20. The Te Kōpua Incorporation is probably the only organisation that has managed to become financially viable and is able to return a dividend to the shareholders. However, in an incorporation there can be no longer be relationship with the whenua. The Incorporation is a financial institution and shareholders only have a share in the business not in the land per se. In this type of imposed structure one needs a piece of paper to say you own a share as opposed to tribal ownership where there is a relationship with the land. This type of structure actually disenfranchises the ahikā.

21. An example of this is in the appointment of Trustees or Committees of Management. At the time Te Kōpua was returned the iwi had faith and trust in those who were appointed as Trustees. They in turn entrusted and empowered the Charitable Trust to manage the work on the whenua. However, as the years have passed new trustees have emerged, some with little knowledge, except what they have read or heard, of the struggle or the lived history of the people who were raised on the whenua, As Trustees they have obligations and responsibilities to manage in the best interests of their beneficiaries. While they may have had good intentions they also have an obligation to respect and continue the relationships that have been built up over the years with other groups of people. For example, Hoturoa Kerr began the Waka Ama revival in Raglan and used Te Kōpua as the launching place for their waka. Since its inception there has been an annual race held in Whaingaroa and Te

Kōpua used as its base. New Trustees stopped the Waka Club from using Te Kōpua as a launching place, much to the disgust of those who know the history and were part of the Waka Ama establishment. That is a good example of a relationship disconnect. Three of the trustees, who have had a long relationship with the land and know the history of the relationship with the Charitable Trust, struggled to hold on to the values handed down to them and convince the new trustees that their obligations are much deeper than the rules for trustees, according to Māori Land Court, are. So tense did that relationship become that one has since resigned and the court has appointed an independent trustee to oversee and monitor the Trust. Initially, the Trust operated very well but now, because people want to follow the letter of the law, tikanga Māori is left behind.

22. The Māori Trustee must take responsibility for the difficulties experienced by Māori land organisations. The court systems need to be more stringent as we have experience attempts for people to succeed that aren't entitled. A registrar of the Māori Land Court was instrumental in setting up the Incorporation and also encouraging owners to partition their land. The original list of shareholders included people who had died and had already been succeeded to as well as their successors. The Māori Trustee was also instrumental in allowing a family to be dispossessed of their rightful shares simply because he allowed a cousin, whose name was similar, to claim the shares as hers.

23. That family have tried to correct it but need to make an application to the Chief Judge to overturn the decision, which they feel unable to do. The Management Committee of the Incorporation are well aware of this but are powerless to do anything apart from advise the whānau what they need to do. Furthermore, when successions are done the court have no way of verifying the whakapapa presented, which provides an opportunity for people to claim shares that are not rightfully theirs. We have a case where this has occurred. The Māori Trustee also obtained the interests of deceased people and fractional shares which they then sold to other shareholders.

24. The gifting of shares from one person to another is also a problem for the incorporation. We have experienced shareholders gifting shares to relatives and non-relatives not of the hapū or descended from an original shareholder. Policies were put into place after the gifting to an outsider was discovered. Inconsistencies and loopholes created in the law have allowed this kind of abuse to occur.

25. Furthermore, the clause relating to whāngai children. We have a case of a person being adopted by a relative. The child belonged to her cousin on her father's side. However the whāngai child, because she has a right under pākeha law to be treated in the same way as natural children now has the largest share of her adopted grandmothers estate. In the Māori way she should only have inherited from the adopted grandfather to whom she has whakapapa. To find a connection with her adoptive grandmother she needs to go back 6 or 7 generations to find a common ancestor, which is distant to say the least.

26. In the same family, the adoptive grandmother legally adopted her own cousin's child but that child received nothing from her adopted mother. The Incorporation always has a dilemma with whāngai children versus natural children and makes administration awkward, for they are often blamed for this type of occurrence, when in actual fact it is the Crown laws that allow it. The spouse of a preferred alienee has a right to a lifelong interest in the husband or wife's estate and the same should apply to whāngai. The Incorporation has the experience of having to create shareholders of Pākeha and pacific island children who have been legally adopted by a shareholder. The long term effects of allowing such successions is that those with whakapapa ties eventually have their rangatiratanga eroded.

27. A further difficulty experienced by the Incorporation, and one that affects all Māori land administration organisations that pay dividends, is that of unclaimed dividends. Unclaimed dividends creates a contingent liability for the Incorporation because they are payable to dead people and they cannot be paid until a proper succession is completed through the Māori Land Court. Deceased shareholders in Incorporation are treated equally as all other shareholders and Māori are probably the only people who can be in debt to a dead person. Pākeha have a mechanism that says debts are owed to an estate but we owe directly to the deceased. After 10 years the IRD now want the Incorporation to hand over the unclaimed dividends, which we refuse to do. Instead, the accumulated are invested and money earned from interest is used to assist in the operating costs of the incorporation.

28. The processes of the Māori Land Court often leave administrators ignorant of potential successors until the successions are complete. They require no proof of whakapapa and we also have a case where the wrong person has succeeded. Although the whānau of the rightful successors were notified by the Incorporation they have not sought to correct it at this stage. The Committee of Management can

only advise and cannot instigate successions, even when they know who the rightful successors are.

29. The Incorporation runs a small subdivision at Te Kōpua. There are 28 leasehold properties, of which one is an unregistered lease. The original leases were Māori Affairs leases, which were for a 50 year term with a right of renewal and rent reviews every ten years based on land valuations. The rents were set at 5% or 6% of the land values. In 2003 the land values for Whaingaroa rose substantially and because the rent review were only every ten years and based on valuation the Incorporation experienced great difficulty in recovering rent. Most of the houses were rented by pensioners who found it difficult to meet the payments. The leases should not have been given a 50 year period and neither should the Māori Affairs have allowed a 10 year rent review period. The norm is 7 years. The Incorporation has spent a great deal of energy and time renegotiating the leases to a shorter term, shorter rent review period and use current market lease rates rather than land valuation, which can fluctuate. Tying leases to land valuations was incredibly naive of the Māori Trustee and the conditions of the leases did not benefit the Māori shareholders.

30. During the last 15 years the Incorporation has had to object to the rating valuations of its properties and has supported other objectors of Māori Land. In 2000 we were faced with a 66% increase in land valuations, which would have had a major impact on the leaseholders and the private property owners at Te Kōpua. The Incorporation together with all of it leaseholders and the other objectors from private properties at Te Kōpua took a case to the valuation tribunal. It cost everyone involved a substantial amount of money in costs only to have the Council, after almost three years of battling, concede that their valuations had been flawed and the eventual rise was only about 6%.

31. We continue to challenge the rating valuations. They have a huge impact on all Māori Land. The basis of valuing Māori land for rating purposes, are premised on a hypothetical sale between a willing buyer and a willing seller. The concept is alien to Māori and no land has ever been offered for sale willingly at Te Kōpua, even though there are plenty of willing buyers. It is only rarely that Māori land can be sold and then only after a long process and with the agreement of the Māori Land Court. The Crown needs to take a more pro-active role in solving the issues of valuing land for rating purposes, particularly in coastal areas like ours, after all under Article II of The Treaty of Waitangi, Māori people are entitled to “full and exclusive undisturbed possession” of their lands. The imposition of rates is a disturbance to that possession

and the Ture Whenua Māori Act as well as previous Māori and Native acts, can also be regarded as a breach particularly in relation to the guarantee of rangatiratanga. The various acts virtually take disempower Māori.

32. Raglan was once the poor man's holiday place but now with the influx of foreigners and rich city people who have bought property and businesses in the town it has become "the place to be", much to the detriment of the Māori population as well as the long term Pākeha residents, the value of property being the most damaging for the people who built this town. *A copy of the submission is attached and marked with the letter **"B"**.*

33. From an operational point of view in order to operate under the structures imposed require people resources. The act requires compliance and to meet those compliance obligations, fully, requires time, human resources and financial resources. The organisations can only be as good as the people in it and the powers that they are given. In our case the number of skilled people are very few in number and therefore, until very recently the organisation has been managed by people who have not necessarily had the proper skills nor the confidence in operating under the Pākeha laws that they are bound by. Lack of knowledge and appropriate skills also leads to misinterpretation of rules.

34. There is basic bar of compliance imposed under Te Ture Whenua Maori Act and unless there is a critical mass of land and income generation the compliance is beyond the organisations. Some of the blocks are so small that they are not commercially viable and the number of shareholders in them renders them fairly useless as nothing can be done on it. Other blocks are still in native bush and because the local law prevents milling them those blocks are of no benefit to the owners except that they contribute to the aesthetic beauty of the place, In our case we don't have enough land to administer to grow the asset for our shareholders and other blocks are so small that nothing can be done on it.

Dated at Whaingaroa this 6th day of September 2013

Aubrey Te Kanawa & Marleina Te Kanawa