OFFICIAL

Wai 2424, #1.1.1

IN THE WAITANGI TRIBUNAL WAI 1040

IN THE MATTER	of the Treaty of Waitangi Act 1975
AND	
IN THE MATTER	of Te Paparahi o Te Raki Inquiry
AND	
IN THE MATTER	of Contemporary Claim by Maiki Marks on behalf of herself, Harry Mahanga and Kitty Mahanga-Nisbet

STATEMENT OF CLAIM

Dated this 1ST day of November 2013

RECEIVED
Waitangi Tribunal
- 4 NOV 2013
Ministry of Justice
WELLINGTON

Morrison Kent
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Wellington and Auckland

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INTRODUCTION

1. The Claimant supports Wai 49, a claim by Sir James Clendon Henare, in respect of which the relief sought stipulates the Crown be restrained from acting and granting consents in respect to Te Moana o Pikopiko I Whiti and that the foreshores, fisheries, waters, river and sea beds of Te Moana o Pikopiko I Whiti be vested in the Ngapuhi people.

THE CLAIMANTS

2. This Statement of Claim is filed by Maiki Marks on behalf of herself, Harry Mahanga and Kitty Mahanga-Nisbett.

THE CLAIM AREA / ROHE

3. This is a contemporary claim that falls within Te Paparahi o Te Raki Inquiry district, and more specifically the Takutai Moana Taiwhenua. The Claimant requests therefore that it be heard within this Inquiry district.

4. While raising issues of broader concern, the claim relates specifically to the Walls Bay Esplanade Reserve ("the Reserve"), a strip of land adjacent to the Opua Harbour in Walls Bay.

THE CLAIM

5. The Claimant says:

   (a) That her claim falls within one or more of the matters referred to in section 6 (1) of the Treaty of Waitangi Act 1975 namely:

      (i) She is Maori;

      (ii) She and other Maori have been and continue to be prejudicially affected by the various ordinances, acts, regulations, orders, proclamations, notices and other laws and by the various policies, practices and omissions adopted by, or on behalf of the Crown, their agents or their successors; and

(iii) These actions are inconsistent with the principles of the Treaty.

CAUSES OF ACTION

Environmental Degradation – Walls Bay Esplanade Reserve

6. Particulars:

(a) The Reserve is of cultural significance for local hapu.

(b) A boat building business is in operation on the property adjoining the Reserve.

(c) The current owner of the boatbuilding business has made numerous applications to the Far North District Council and the Northland Regional Council, from around 1994 until the present day, to occupy the land under a grant of easement.

(d) The boat building operation has contributed to the pollution of the foreshore area and associated coastal area.

(e) The Reserve has been the dumping ground of boatyard debris and contaminants.

(f) The Claimant was involved, along with hapu and members of the community, in a restoration and beautification project of the Reserve, beginning in May 2010.

(g) As a result, the significance to the local hapu has been further enhanced, while it has gained more environmental significance to the broader community. Its status has also been raised by its inclusion in the Paihia to Opua coastal walkway.

(h) The Claimant alleges that environmental degradation continues to occur and threatens the maintenance and longevity of the Reserve.

(i) The Claimant alleges that the responsibility for ensuring the maintenance and longevity of the Reserve lies with local government authorities and the Department of Conservation, under delegated authority by the Crown.

(j) The Claimant further alleges that the Crown and local government are in breach of the principles of the Treaty of Waitangi, in particular the duty of active protection, in relation to the Reserve.

(k) The issues will be particularised further as research becomes available.

7. Prejudice:

(a) The Claimant alleges the Crown is pursuing policies that fail to acknowledge the Tino Rangatiratanga of hapu over their mana whenua.

(b) The Claimant alleges the Crown is pursuing policies that continue to disregard customary ownership.

(c) The Claimant alleges that the Crown has pursued policies that extinguish Maori customary ownership rights and replace them with individual commercial use rights which will result in the alienation of the land resource and destruction of the marine resources.

(d) The Claimant alleges that the Crown is pursuing policies that significantly promote the degradation of the environment and all that relies on it.

(e) The Claimant alleges that the environmental degradation resulting from the Crown's failure to protect the environment has contributed to the loss of the cultural and economic resources of the southern Bay of Islands.

(f) The Claimant alleges that the Crown has failed to monitor or enforce commercial activities to the detriment of the environment.

RELEVANT LEGISLATION

8. The legislation relevant to this claim includes, but is not limited to the:

(a) Resource Management Act 1991;

(b) Local Government Act 2000, and its predecessors; and

(c) Reserves Act 1977.

BREACHES OF THE TREATY

9. The Crown has:

(a) Failed to guarantee to the Claimants their tino rangatiratanga over their taonga;

(b) Failed to guarantee Maori customary rights in the use of taonga;

(c) Failed in its duty to the Claimants to actively protect their tino rangatiratanga over rights of ownership and use of taonga;

(d) Breached its duty to act reasonably and in good faith towards them in respect of their taonga; and

(e) Breached its duty to consult with them to ensure that any Crown actions, laws, policies and regulations in respect of this taonga were consistent with Te Tiriti o Waitangi.

RECOMMENDATIONS SOUGHT

10. The claimants seek the following findings and recommendations from the Waitangi Tribunal:

(a) That the facts are in their favour;

(b) That the prejudice is inconsistent with the Te Tiriti o Waitangi and the principles of the Treaty of Waitangi;

(c) That the claim is well founded;

(d) The removal of a seawall constructed by a private individual between the reserve land and the Opua harbour;

(e) The construction of a fence separating the privately owned boatyard and the Walls Bay Esplanade Reserve; and

(f) Any other relief that the Tribunal deems appropriate.

AMENDMENT TO CLAIM

11. The Claimant reserves the right to amend this Statement of Claim, in the light of research, evidence, submissions or other material, which may come to light during the preparation and presentation of this claim.

This document is filed by Dr Bryan Gilling solicitor, for the abovenamed Claimant whose address for service is at the offices of Morrison Kent, Lawyers, 19th Level, Morrison Kent House, 105 The Terrace (PO Box 10-035; DX SP20203), Wellington 6011.

Documents for service on the abovenamed Claimant may be left at that address for service or may be –

(a) Posted to the solicitor at PO Box 10-035, Wellington;

(b) Left for the solicitor at a document exchange for direction to DX SP20203;

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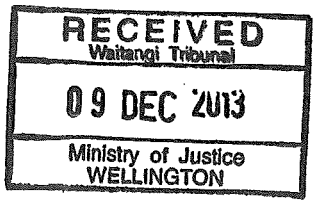
STATEMENT OF CLAIM

Dated this 9th day of December 2013



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INTRODUCTION

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THE CLAIMANTS

2. This Statement of Claim is filed by Maiki Marks on behalf of herself, Harry Mahanga and Kitty Mahanga-Nisbett.

THE CLAIM AREA / ROHE

3. This is a contemporary claim that falls within Te Paparahi o Te Raki Inquiry district, and more specifically the Takutai Moana Taiwhenua. The Claimant requests therefore that it be heard within this Inquiry district.

4. While raising issues of broader concern, the claim also relates to specific sites, including but not limited to: the Walls Bay Esplanade Reserve ("the Reserve"), a strip of land adjacent to the Opua Harbour in Walls Bay, and Te Hikuwai, a wahi tapu and site of significance at Russell.

THE CLAIM

5. The Claimant says:

   (a) That her claim falls within one or more of the matters referred to in section 6 (1) of the Treaty of Waitangi Act 1975 namely:

      (i) She is Maori;

      (ii) She and other Maori have been and continue to be prejudicially affected by the various ordinances, acts, regulations, orders, proclamations, notices and other laws and by the various policies, practices and omissions adopted by, or carried out on behalf, of the Crown, their agents or their successors; and

(iii) These actions are inconsistent with the principles of the Treaty.

Statement of Issues

6. The Claim addresses issues in each of the following themes of Te Paparahi o Te Raki Statement of Issues for Stage 2:

   (a) Public works and other takings;

   (b) Local government and rating;

   (c) Ownership and management of environmental, water and other non-land resources; and

   (d) Te reo Maori, wahi tapu, taonga and tikanga.

Contemporary Claim – Time Period

7. The Claim relates to the time period beginning in 1994 and continuing until the present day.

CAUSES OF ACTION

Environmental Degradation – Walls Bay Esplanade Reserve

8. Particulars:

   (a) The Reserve is of cultural significance for local hapu.

   (b) A boat building business is in operation on the property adjoining the Reserve.

   (c) The current owner of the boatbuilding business has made numerous applications to the Far North District Council and the Northland Regional Council, from around 1994 until the present day, to occupy the land under a grant of easement.

   (d) The boat building operation has contributed to the pollution of the foreshore area and associated coastal area.

(e) The Reserve has been the dumping ground of boatyard debris and contaminants.

(f) The Claimant was involved, along with hapu and members of the community, in a restoration and beautification project of the Reserve, beginning in May 2010.

(g) As a result, the significance to the local hapu has been further enhanced, while it has gained more environmental significance to the broader community. Its status has also been raised by its inclusion in the Paihia to Opua coastal walkway.

Protection of Wahi Tapu

9. Particulars:

(a) The Claimant further alleges that sites and significance and wahi tapu in and around the wider Opua Marina area have not been protected by the Crown through its cultural heritage legislation or local authorities through their district plan processes.

(b) In addition, the Claimant refers to Te Hikuwai at Russell, a wahi tapu and site of significance to all of Ngapuhi, which is now a carpark. The Claimant also refers to a pa site near Russell which is now a caravan park.

Allegations against the Crown

10. In relation to both 8 and 9 above, the Claimant alleges that:

(a) environmental degradation continues to occur and threatens the maintenance and longevity of the Walls Bay Reserve;

(b) local government authorities, the Department of Conservation and other Crown agencies have failed to protect sites of cultural significance to tangata whenua in the vicinity of Kororareka / Russell;

(c) the responsibility for ensuring the maintenance and longevity of the Reserve and historic and cultural preservation lies with local government authorities, under delegated authority by the Crown, and with the Department of Conservation, an agent of the Crown;

(d) the Crown has failed to ensure local government, resource management and historic and cultural protection legislation ensures actual, durable and measurable consultation with tangata whenua; and

(e) the Crown has failed to ensure local government, resource management and historic and cultural protection legislation includes checks for local authorities to ensure consultation policies with tangata whenua are sufficient, or ensure there is accountability for when they are not.

11. As a result, the Claimant further alleges that the Crown and local government under its delegated responsibilities are in breach of the principles of the Treaty of Waitangi in, in particular, duties of consultation and active protection.

12. The issues will be particularised further as research becomes available.

PREJUDICE

13. The Claimant alleges that:

(a) the Crown is pursuing policies that fail to acknowledge the Tino Rangatiratanga of hapu over their mana whenua.

(b) the Crown is pursuing policies that continue to disregard customary ownership.

(c) the Crown has pursued policies that extinguish Maori customary ownership rights and replace them with individual commercial use rights which will result in the alienation of the land resource and destruction of the marine resources.

(d) the Crown is pursuing policies that significantly promote the degradation of the environment and all that relies on it.

(e) the environmental degradation resulting from the Crown's failure to protect the environment has contributed to the loss of the cultural and economic resources of the southern Bay of Islands.

(f) the Crown has failed to monitor or enforce commercial activities to the detriment of the environment and sites of cultural significance to tangata whenua.

(g) the Crown has failed to protect sites of historical and cultural significance to tangata whenua.

RELEVANT LEGISLATION

14. The legislation relevant to this claim includes, but is not limited to the:

(a) Resource Management Act 1991;

(b) Local Government Act 2000;

(c) Reserves Act 1977; and

(d) The Reserves and Other Lands Disposal bills.

BREACHES OF THE TREATY

15. The Crown has:

(a) Failed to guarantee to the Claimants their tino rangatiratanga over their taonga;

(b) Failed to guarantee Maori customary rights in the use of taonga;

(c) Failed in its duty to the Claimants to actively protect their tino rangatiratanga over rights of ownership and use of taonga;

(d) Breached its duty to act reasonably and in good faith towards them in respect of their taonga; and

(e) Breached its duty to consult with them to ensure that any Crown actions, laws, policies and regulations in respect of this taonga were consistent with Te Tiriti o Waitangi.

RECOMMENDATIONS SOUGHT

16. The claimants seek the following findings and recommendations from the Waitangi Tribunal:

(a) That the facts are in their favour;

(b) That the prejudice is inconsistent with the Te Tiriti o Waitangi and the principles of the Treaty of Waitangi;

(c) That the claim is well founded;

(d) The removal of a seawall constructed by a private individual between the reserve land and the Opua harbour;

(e) The construction of a fence separating the privately owned boatyard and the Walls Bay Esplanade Reserve;

(f) An enacted requirement to have a specialist expertise in council organisations to address issues of rangatiratanga, consultation and active protection (the Claimant can provide further detail on such a structure);

(g) Restoration of the Te Hikuwai site reflecting its wahi tapu status, together with any other such sites identified in the Claimants' evidence; and

(h) Any other relief that the Tribunal deems appropriate.

AMENDMENT TO CLAIM

17. The Claimant reserves the right to amend this Statement of Claim, in the light of research, evidence, submissions or other material, which may come to light during the preparation and presentation of this claim.

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