IN THE WAITANGI TRIBUNAL **WAI 898**

IN THE MATTER	of the Treaty of Waitangi Act 1975 (as amended)
AND	
IN THE MATTER	of the Te Rohe Pōtae Inquiry (Wai 898)
AND	
IN THE MATTER	of a claim by **WAIREHU R TE HUIA, TE PIKIKŌTUKU H MANIAPOTO, MATARANGIMAHUE V INGLEY, TAMATEA D TE HUIA, TE KAWENATA R ANDERSON AND PARANAPA R OTIMI** for and on behalf of **NGA URI O TE WHAKATAUTE** (Wai 1593)

JOINT BRIEF OF EVIDENCE OF THOMAS MANIAPOTO, VALERIE INGLEY, ROVINA ANDERSON, DANA MOALA, AND HAROLD MANIAPOTO

RECEIVED
Waitangi Tribunal
4 Jul 2014
Ministry of Justice
WELLINGTON

KWL
KONING WEBSTER LAWYERS

Level 1, 34 Gravatt Road
PO Box 11120
PAPAMOA 3151
Telephone: (07) 547 4283
Facsimile: (07) 572 0220

Solicitor Acting: Spencer Webster
Carey Manuel

MAY IT PLEASE THE TRIBUNAL

Introduction

1. This is a joint brief of evidence presented by Harold Maniapoto, Thomas Te Whiwhi Maniapoto, Valerie Ingley, Rovina Maniapoto, and Dana Moala for and on behalf of nga uri o Te Whakataute Te Huia Raureti, me Te Whiwhi Mokau, me Peehi Tukōrehu, me Te Winitana Tupōtahi, me Rōpata, me ētehi atu.

> Anei ra nga kupu waihotanga iho o nga tupuna:
>
> > "Ko Mōkau ki runga, Tamaki ki raro,
> > ko Mangatoatoa ki waenganui."
>
> Anei tēnei ko Mangatoatoa me ōna tutuku korero e mihi e tangi nei:
>
> > "Ko Kakepuku te maunga, Pūniu te awa, Peehi Tūkōrehu te tangata,
> > ko Paretekawa tona karangatanga hapu."
>
> Tēnei ra tona hekenga tārewa, e mihi e tangi nei, tena koutou.
>
> Engari ko te nuinga o nga kōrero i whariki nei ki mua ki te aroaro o te roopu whakamana i te Tiriti, i te ra nei, i tutuku mai i nga tupuna o Ngāti Taohua, Ngāti Tuwhakataha, me Ngāti Te Rahurahu, ara ko Te Whakataute Te Huia Raureti, ko Te Whiwhi Mokau, ko Te Kawa, ko Waiuku, ko Hepi, me ētehi atu, me te mokopuna a Peehi Tukōrehu a Te Winitana Tupōtahi o Ngāti Paretekawa.

2. Our primary hapu is Ngāti Paretekawa of the Te Kanawa section of Ngati Maniapoto; however we also descend from Ngāti Tuwhakataha, and Ngāti Taohua, the ancestral tupuna of the Tokanui lands. Our marae is Mangatoatoa which is situated on the banks of the Pūniu River "Te aukati raki o te Rohe Pōtae," in the shadows of the Pirongia and Kakepuku maunga. We are direct descendants of Paretekawa and Whati.

3. We also descend directly from Te Huia Raureti, also known as Te Whakataute, and his sons Raureti Te Huia and Wairehu Tomo, and also Te Whiwhi Mokau, Te Winitana Tupōtahi, and other Tupuna referred to in our briefs. Our whakapapa is attached as **Appendix A.**

An Overview

4. These claims are based on the works of our grandfather Raureti Te Huia, his father Te Whakataute Te Huia Raureti, and Te Whiwhi Mokau, Te Winitana Tupōtahi, and other tupuna who opposed the taking of their lands in the Tokanui block under the Public Works legislative framework.

5. Our father used to say that we were stuck between the mad and the bad. He was right. Our kainga and meagre remaining lands were right in the middle of the Tokanui Mental hospital and the Waikeria prison. This is the legacy that the Crown left for us, their descendants.

6. Our evidence will highlight:

   6.1 The relationship between the wars and loss of our lands north of the Puniu River and the subsequent loss of our last remaining lands in the Tokanui block;

   6.2 Takings of our remaining lands under the Public Works Act for the Tokanui Mental Hospital and Waikeria Prison; and the necessity of the taking for a Mental Hospital;

   6.3 Petitions and letters written by Te Whakataute, his son Raureti, Te Whiwhi Mokau, Te Winitana Tupōtahi, and our many other tupuna protesting and objecting to the takings under the public works legislation, and the Public Works Inquiry held to hear the objections, and the breach of the Treaty relative to the considerations of the Inquiry;

   6.4 The continuing protest post inquiry and the final loss;

   6.5 Section 40 negotiations for Tokanui Mental Hospital and the continuing difficulties between the Public Works and the Treaty;

   6.6 Raukawa Settlement Bill and submissions concerning a further loss of our lands at Waikeria lands; and

6.7 Environmental and Wahi Tapu breaches of the Treaty.

7. This evidence is also presented to support the following claims:

7.1 Wai 2312 Rōpata claim;

7.2 Wai 2313 Te Whiwhi Mokau claim by T. S. Maniapoto and others;

7.3 Wai 2314 Peehi Tukōrehu claim by D. Moala and others;

7.4 Wai 2013 Paretekawa lands claim by W. Taitoko and others;

7.5 Wai 2014 Paretekawa non-Raupatu claim by H. Maniapoto and others;

7.6 Wai 2015 Paretekawa Raupatu claim by H. Maniapoto and others; and

7.7 Wai 800 Maniapoto Boundary claim by R. Haar, V. Ingley and others.

Te Whakataute

8. The Wai 1593 claim is lodged by the descendants of Te Whakataute concerning grievances and Treaty breaches caused by the loss of lands and resources to himself his whanau and descendants, including other Rangatira and hapū who resided on these, their last remaining lands, in the area of Puniu and Kawa, which were called the Tokanui, Pōkuru, and Kakepuku blocks. The sentiments expressed above can apply as equally to each of the Tupuna and other claims jointly presenting in this session.

9. As shown by Appendix A, Te Whakataute was one of a number of sons of Te Huia Raureti, whom he fought alongside in the defence of their lands north of the Pūniu River, at Rangiriri, Pāterangi, Hairini and finally Orakau just prior to the confiscation of those lands and interests in 1864. Te Whakataute, under the stewardship of his father Te Huia Raureti were leading chiefs of the time and featured prominently alongside his father at the defence of Orakau. They were a key part of

the personal contingent of Rewi Manga Maniapoto during that period and the years following.

10. This struggle for justice and recognition under the Treaty of Waitangi was later to be carried on by his grandsons, (and our grandfather) Raureti Te Huia, his brother Wairehu Te Huia, and others, who opposed and resisted the taking of their last remaining lands in the Tokanui Block by what they described in one of their petitions as "another confiscation" under the Public Works Act.

War and Raupatu

11. In particular, Te Whakataute travelled with his whanaunga Rewi Maniapoto and Te Winitana Tupōtahi to Taranaki to assist their whanaunga Wiremu Kingi at Waitara.

12. Te Whakataute was one of the key chiefs at Orakau. He managed to escape and made his way back to his lands south of the Puniu River, on what was to eventually become the Tokanui block.

13. Evidence regarding the raupatu and its effect on Te Whakataute and his uri was presented at hearing week 4 in April 2013.[1] We do not propose to reproduce that same evidence again; however we make the following relevant points:

    13.1 All of the Ngāti Paretekawa lands north of the Aukati (Puniu River) were confiscated by way of proclamation issued under the New Zealand Settlements Act 1863;

    13.2 The hapu received nothing through the Compensation Court process;

    13.3 Ngāti Paretekawa were left landless north of the Puniu River; and

[1] See evidence Wai 898 #K014, Brief of Evidence of D Maniapoto; #K015, Brief of Evidence of T Maniapoto; #K016, Brief of Evidence of T and H Maniapoto; and #K028, Brief of Evidence of V Ingley and H Maniapoto;

13.4 With nowhere else to go, Te Whakataute welcomed his whanaunga south with him on to the Tokanui block.

Background to Customary Tenure

14. As a consequence of the unjustified Crown invasion and confiscation of our Ngāti Maniapoto ancestral lands and interests north of the Puniu River, our tupuna were forced to flee back into "Te Nehenehenui" in Te Rohe Pōtae District to seek refuge and safety amongst their Ngāti Maniapoto kin south of the Aukati (the Puniu River).

15. As Crown aggression toward Maniapoto tupuna eased after 1864 our tupuna eventually settled and lived back on these lands in customary peace and harmony for the next 20 plus years. However, harmony and peace were once again to be shattered by the ever hungry eyes of the Crown's insatiable colonial appetite for more and more land.

16. The Rohe Pōtae, which term the district south of the Puniu River was now known by, provided one of the last bastions of available rich fertile lands in the North Island to satisfy that hunger. And so by the mid 1880's the tribulations started all over again, the Crown seeking to take the Rohe Pōtae by whatever means it could, and again brought, destitution, pain, and suffering upon an already devastated people, eventually coveting and taking their last remaining customary estates, lands, and resources outside the confiscated lands area (that it had already taken from those very same people).

17. Directly in line with that intent, the Crown, by dubious and questionable means engineered applications for investigation by the Native Land Court, of the lands directly across the Puniu River. The Kakepuku and Tokanui blocks were amongst the earliest investigations of title in the area.

18. The Tribunal has already heard evidence concerning the Kakepuku investigation from previous witnesses at the last hearing so I will defer to them for those matters. However, the Tokanui Block is another matter, and I wish to deal with some of those matters in my brief today.

19. We draw on commissioned works by both Taitoko[2] and Alexander[3] in this brief.

The Creation of the Tokanui Block

20. Following the confiscation of the lands to the north of the Puniu River, all that our tupuna had left were the lands and resources south of the Puniu River, including the Tokanui block.

21. The Tokanui block comprised approximately 10,205 acres and was situated along the Puniu River, opposite to the lands confiscated by the Crown following the wars in 1864.

22. The Tokanui Block investigation of title took place in 1886 with Major W. G. Mair presiding over what he was to describe as:

> "perhaps one of the most important cases ever brought before any court" [4]

23. The case for Tokanui concluded on 21 Oct 1889 when final orders were made setting aside the 10,205 acre Tokanui block and vesting the land in Rewi Manga Maniapoto and 117 others.[5]

24. The block was surveyed in 1895 and a survey charge of £127 11s 3d was held over the block as survey liens. [6]

25. From the time of the introduction of the Native Land Court into the Rohe Pōtae the court sought to alienate most, if not all, the lands remaining in Maori hands for ease of sale to the Crown and eventually Pakeha settlers. The Tokanui block was no different.

26. No sooner had individual title been determined schemes were being hatched by Crown officials in Wellington on how they could get their hands on the land.

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[2] Wai 898, #A145, Taitoko, *A History of the Tokanui Block,*

[3] Wai 898 Wai 898 #A063, Alexander, *Public Works and Other Takings in the Rohe Pōtae*

[4] Taitoko, above n 2*,* at 4

[5] At 4

[6] At 4

27. Almost immediately after title determination, in November of 1889, the purchase and subdivision of the parent block commenced and would continue to be divided and sub-divided over and over again for the next 20 - 30 or so years until finally almost half of the original area of land would end up alienated from Maori ownership mainly by pre-emptive Crown purchase and compulsory acquisition under the Public Works Act.

28. The other half would be progressively acquired for/by Pakeha over the next two or three decades, leaving only a measly 400 odd acres in the ownership of the original owners, from which they were expected to eke out a means of livelihood for themselves, their whanau, and hapu. A state that would remain for the next 100 plus years and to the present day.

29. And now, as a result of the recent offer to return the area of lands under the control of the Waikeria Prison (which was part of the original takings) to Raukawa as settlement redress under the Raukawa Claims settlement Bill, the Crown intends to impose and inflict the same grievance and prejudice onto us all over again.

30. Te Whakataute and our other tupuna and whanau held extensive interests in the Tokanui block and was awarded title in subdivisions of the block, including:

    30.1 Tokanui A;[7]

    30.2 Tokanui C;[8]

    30.3 Tokanui 1B;[9]

    30.4 Tokanui 1C;[10] and

    30.5 Tokanui 1D & 1D2A2.[11]

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[7] At 7

[8] At 7

[9] At 33 - 39

[10] At 40

Public Works Takings

31. The public works takings for the Tokanui Mental Hospital and the Waikeria prison is one of the case studies researched and reported on by David Alexander in his report on public works takings in the Te Rohe Pōtae.[12]

32. The Crown took around 2948 acres of our lands for the Tokanui Mental Hospital in 1910-1911. They took a further 541 acres for a reformatory farm in 1910.[13]

33. Our tupuna, Raureti Te Huia and others opposed the taking and they petitioned the government. The petition poignantly stated:

> "We did not know what guns to carry to meet this attack"[14]

The Necessity Of The Taking

34. The genesis of the idea of a super site for mental patients rose from the Inspector General of Mental Hospitals, who was also Inspector General of prisons as well. He had this idea of acquiring thousands of acres of land on which he could build a Super Mental hospital that would cater for all manner of mental health problems, and close the hospitals at Wellington and Auckland as the patients become relocated to the new site.

35. His dreams of grandeur extended to running a private railway spur from the Te Pahi Railway Station at Te Mawhai to the hospital (and eventually the prison) and using the inmates of both the prison and hospital to break-in and develop the land. Whilst developing the idea he incorporated a reformatory farm into the scheme and designated the eastern most area for that purpose.

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[11] At 27

[12] Alexander, above n 11, at 576 -628

[13] At 576

[14] Petition 35/1913 of Raureti Te Huia and 47 others, 4 December 1912. Maori Affairs Head Office File 1913/2898

36. The Crown had already acquired a large tract of land in the Tokanui block in the period between title determination of the Tokanui Block and 1908.

37. The scheme did not appear to be in any way whatsoever to be in the National interest, nor of such an importance in the public interest to necessitate such an extensive taking. This was certainly so for our Tupuna back then. We are unaware of any records determining that the taking was in the national or public interest or of such interest to be for the better public good of Aotearoa.

38. Considering that the Crown had already confiscated over 1.2 million acres from these very same Maori communities just across the river from these lands only some forty years earlier. It is a highly reasonable argument that the extent of this taking, or even the taking itself, was totally unnecessary. In the view of the claimants it appears to be nothing more than another act of convenience and opportunity on the part of the government and the Crown, to take land from Maori in preference to Pakeha land.

39. This can be borne out by large area of the land that was not used for the Mental Hospital and was used for the prison instead and what they were not able to manage was hocked off to Pakeha farmers and neighbours.

40. As history has borne out, less than 200 acres was used for the Mental Hospital itself, and it wasn't even built on any of the Tokanui lands but on the Pōkuru block next door instead. Only around 20-30 acres of the five thousand plus acres that was taken for a Mental Hospital from the Tokanui block was ever used for the purpose of a Mental Hospital. Areas of land that were difficult to manage became excess to their need and were sold off as it suited the officials of the time, without so much as a passing thought to return the lands to the original Maori owners until 1997 when the Tokanui Hospital closed.

Opposition and Petitions

41. Our tupuna were consistent in their resistance to sell the Tokanui lands

and despatched signed petition after petition to Ministers and other Authorities in Wellington, totalling some 13 or more petitions on behalf of some 30-40 whanau and hapū members.

42. From the time our tupuna knew that the Government wanted to take the lands for a Mental Hospital and reformatory farm, our grandfather Raureti Te Huia, and his father Te Whakataute, Te Whiwhi Mokau, Te Winitana Tupōtahi and many others protested their opposition to the taking and continued to do so for the duration of the taking.[15]

43. In March 1909, Raureti Te Huia wrote to the Native Minister asking that the land not be taken for Mental Hospital purposes. He highlighted the fact that our people had already suffered the effects of the raupatu north of the Puniu and should not suffer again with another confiscation. Our grandfather noted that if the proposal was agreed to, then he would cause trouble.[16]

44. In September 1909, Raureti Te Huia wrote twice in one week to the Native Minister seeking an explanation as to why road survey lines were being surveyed on the Tokanui lands. Raureti further noted that the owners had decided to build permanent homes on the very land the Crown was surveying. The Crown survey lines cut through the fences. Raureti also sought Crown assistance in utilising the land, by way of grants that were available to Pakeha farmers and landowners. He never received an answer to these requests.[17]

45. During March and April 1910, Raureti Te Huia and Te Whakataute Te Huia and others submitted objections to the proposed takings.[18] Grounds for objections included landlessness, waahi tapu, intention to remain on and work the land and traditional connections.[19]

46. On 8th March 1910, Raureti Te Huia submitted the first of a number of

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[15] Alexander, above n 11, at 576

[16] At 584

[17] At 588

[18] At 594

[19] At 598

petitions concerning Tokanui in which he makes strong objection to the taking of their lands and states…

> He Kupu atu tenei…he whakahe ana matou ki nga tango e mau nei mo te whare hohipera e tango nei I te Tokanui Poraka"….
> (My statement (to you is), we strongly object to the taking of the lands within the Tokanui block for a hospital. The purpose of my protest is, that we should discuss these matters before the Court so that I may disclose the reason for my objections to the taking of the lands in that block relating to:
> Tokanui No 1 **D**
> Tokanui No 1 **B** No 2 (translations by witness)

47. At the same time his father, Te Whakataute Te Huia Raureti, his mother, Ngāti, and his other siblings, Hepi, Te Kawa, Wiripine Te Whiuki, and Te Wiki Hepi sent a petition also, firstly acknowledging receipt of the maps showing the areas of their lands being taken by the "Ture" and then stating:

> Kaati, he kupu atu ma matou, Kāore rawa matou e whakae kia riro aua piihi whenua i te mea kāore matou e hiahia ki te utu, ki te aha ranei, mo aua whenua…..they go on to explain…I te mea koinā tonu nga kāinga o ngo matou tupuna matua tae mai kia matou. No reira, hei kupu atu ma matou kia koe,
> me mate ahau, me mate mo te whenua i takoto ai aku matua karanga maha. Ara –
> Tokanui 1 D Sec 2 785.2.0 acr
> Tokanui 1 B No 2 369.1.0 acr
> Pōkuru No 1 214.2.36 acr…..
>
> (Heed, this statement by us, we absolutely object to those pieces of lands being taken, neither by payment or by whatever other means will we part with those lands… We wish to work those lands ourselves. The reason being, those were the dwelling places of our ancestors and on down to us. Therefore, (This is) our solemn word to you:
> "should I die, let me die for the lands where my forebears and ancestors lay") *(translations by witness)*

48. Te Whakataute, in this closing statement most ably highlights the intensity, the depth, and the passion, that he and his descendants had for these, the lands where his forebears lay, and the anguish and despair for that loss. In his final statement Te Whakataute recalls a whakatauaki (proverb) used by ancestor chiefs before him to inspire courage and commitment to the defence of their tribal heritage, and reminiscent of a similar one made at Orakau prior to that epic battle:

"Me (he mea) mate au, me mate ki runga ki te whenua o aku matua tupuna".

49. Then in April 1910 Te Winitana Tupōtahi and his son Maniapoto, Whete Manga, the whanau of Hitiri Te Paerata, and 9 others in their petition absolutely objects to the taking of their lands:

> *Ko a matou tino whakahe koia tenei e whai ake nei* (our absolute objection we state as follows)

50. They go on to outline their objection stating:

50.1 Tokanui 1 B No 2 B was set aside for a papa kāinga (dwelling place) and contains our urupa from our ancestors (time) down to us;

50.2 This land is the residue from the Crown purchase;

50.3 Many are now landless and we wish to hold on to this piece for ourselves and our relations who are landless to live on;

50.4 This piece is fenced, sown in grass, and cultivated. We have many matters that we wish to address before the Maori Land Court or the board when we meet. The important Council house "Hui te Rangiora" is also on this land;

50.5 Tokanui No 1A No 2B, All the fencing and sowing in grass is finished we therefore object to its taking under "Te Ture mo nga mahi Nunui 1908" (the Public Works Act 1908);

50.6 Tokanui 1D Sec 2. A whare still stands on this piece with fences in some parts; and

50.7 Tokanui C No 18B. Similar objections (to the other blocks) apply to this piece and Tokanui 1C Sec 1, "Waiwherowhero" also.

51. Again that same sense of despair and passionate concern is seen in the words of these tupuna Rangatira in their plea not to take their lands under the "Te Ture mo nga mahi Nunui 1908."

52. Te Winitana Tupōtahi and others (along with a number of other

petitioners) were to submit further objections by petition through Solicitors and Agents Earl & Kent over the Tokanui 1D Sec 2 block claiming that:

52.1 Many of the owners have no other lands for their maintenance and also live on the lands; and

52.2 The remaining portions left to the owners would be inadequate for their maintenance.

53. Another 8 more petitions would be submitted by these solicitors on behalf of the Maori owners of the lands being taking, and in every single case the petitioners objected most emphatically to the taking on a number of grounds, including[20]:

53.1 In almost every case the objectors did not own sufficient land or would be left entirely without lands or stated that should the lands be taken any remaining lands would not be sufficient for their sustenance or wellbeing;

53.2 Some were already farming the lands and wanted to keep it; and

53.3 What other lands the owners had were of little value for maintaining a livelihood, some were swamp.

54. A petition of significant interest was one from Mākereti Hinewai and others concerning Tokanui 1A No 2, where they state:[21]

54.1 If the land is taken they would be without access to the river frontage;

54.2 The lands had already been settled as a reserve for the benefit of landless peoples of their hapu;

54.3 If the land is taken they would be without access to the river

[20] At 595

[21] At 598-599

frontage;

54.4 They would lose access to their fishing grounds in the (Puniu) river;

54.5 Money could not compensate for the loss of this land; and

54.6 The Pa where Rewi Maniapoto and his people lived is on the land scheduled to be taken.

55. Around the same time Te Whiwhi Mokau, Te Muraahi Niketi, Taurangamowaho, Hapimana, and 4 others submitted their petition, also objecting to the taking in accordance with Sec 90 of PWA concerning Tokanui 1B, Tokanui 1B No 2, and Tokanui 1D on the basis that:

55.1 They had occupied the lands since their ancestors' time down to them;

55.2 They have only these lands to cultivate their food on, which is growing on the lands at present;

55.3 Their burial places from there tupuna's time down to them are on the lands; and

55.4 The areas that were being sought were the same areas that had been set apart for Papakainga for them.

56. Our Tupuna objected to the loss of their interest in the following Tokanui blocks:[22]

Tokanui No1D. Sec.2 (785.ac)	Tokanui No 1 B No 2 (369.ac)
Tokanui 1A No 2 (52.ac)	Tokanui 14 B (244.ac)
Tokanui 16B (191.ac)	Tokanui 18 B

[22] Wai 898 #A063(a) Alexander, *Public Works and Other Takings in the Rohe Pōtae*, Supporting Documents Bank, at pp1240-1242

57. These objections are provided by Alexander in his Supporting Documents Bank.

Hearing of Objections

58. It is really interesting to note in one of the official memos of 8th June 1910 relating to the objections, that the official states that:

> …from the general untended condition of the land that compensation must be the goal of the objectors
> Before the land can be taken, these objections must *be inquired into and disposed of* by someone appointed by the Minister for Public Works
> "The court will have the machinery for dealing with Native cases, and *will ultimately have to fix the compensation.*[23]

59. The letter clearly suggests that the purpose of the inquiry into the objections is to "dispose" of the objections, and further assumes that compensation alone is the purpose of the objections, and is the only way that the petitioners' objections can be settled. We say, merely a matter of process rather than serious consideration of the Maori owner's concerns.

60. The hearing was scheduled and held from 26-27 July 1910 with Judge Walter Edward Rawson presiding. The Judge reported to the Under-Secretary of the Native Department in Wellington on 9th August 1910 in which he provided comments relating firstly to the evidence of the objectors and then expressing his opinion on the whole matter.[24]

Rawson's Report on the Hearing

61. Despite the number of serious customary matters raised by our tūpuna in their objections, being also put before Judge Rawson at the inquiry, the Judge, in his report attached little or no real significance to it, apparently relying mainly on the compensatory provisions only and not having any consideration whatsoever to our Treaty rights, for example:

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[23] At 1238

[24] At 1271

61.1 Tokanui C 18 objections were totally rejected. However, the report fails to state the reason. The Judge recommends the land be taken; and

61.2 Tokanui 1A No2 involved objections concerning a number of matters having highly significant customary value to our Tupuna and their forbears, including the:

"Loss of access to fishing grounds by them"

62. In response the Judge opined that the loss of fishing rights may be compensated by payment of money.

63. 'I quote a well-known adage: "give a person a fish they will survive for days…teach the person to fish, they will survive for ever."

64. The mentality of paying compensation for the loss of the right to fish for your survival flies in the face of common decency to human society, and is a gross breach of our tūpuna Article two Treaty rights of undisturbed possession.

65. However worse was yet to come. The final decisions of the compensation court signalled the finality of the governments intent and sealed the fate of fruitless objections by our tupuna when it decided that with respect to the severance of access to the Puniu River by the Maori owners that:

> *"The court cannot entertain the claim by the owners of No 1A No 2 for compensation on the grounds of severance from the Puniu River. A small stream 2ft 6 in deep and proportionately wide runs through one side of the blocks. There are also wet swamps on the block which could be so manipulated to provide ample water irrespective of the stream already alluded to."*[25]

66. However, what the Judge didn't even bother to consider was, that the swamps would be drained dry by the neighbours and the stream would be polluted by local and neighbouring farming activities. But more importantly, apart from expecting the Maori owners to take their water

[25] At 1312

from stagnant and foul swamp water, he failed to consider that because of the taking the Maori owners no longer had customary access to one of their most important food sources, the Puniu River.

Ancestral and spiritual significance of lands including burial places and urupa of the dead on the lands

67. The Judge recommended the urupa be reserved and fenced and cared for, an 8th of an acre he thought would be sufficient for each place.

68. Our view is that despite making small provisions for the reservation for the dead the arbitrary eight acre guess at the area of the urupa was nothing short of absurd and, again no consideration was given for the living. No consideration whatsoever was made for the cultural and spiritual significance of this block of land.

Loss of cultivations and livelihood of the owners

69. The Judge concluded that the cultivations should be excluded "as a favour and not as a right". However, only if it would not hamper the department in its scheme.

70. We say: "as a favour and not as a right", what sort of standard is that. Nowhere in the discussion are our Article two Treaty rights.

Loss of settlements and houses on the lands

71. The Judge appears to have most reluctantly agreed to a concession to return those areas where the owners housing and settlements were back to them.

Landlessness of owners

72. Again the Judge in his opinion steered toward diminishing the significance of the objection. Proffering instead the view that "the only question is the amount of compensation".

73. Again the focus is on payment as the sole discretion without consideration for the Treaty rights being diminished and eroded by the taking:

73.1 Tokanui 1B No 2B: Our Tupuna, Te Whakataute and Raureti wanted to retain these lands because of the houses, crops, and urupa thereon. The Judge recommended that the land be retained by the owners because:

"the owners genuinely desired to retain this urupa and cultivation"

73.2 Tokanui C No 14B: The objection was withdrawn because the lawyer thought the owners had sufficient other lands.

73.3 Tokanui C No 15B: Despite the owner having insufficient lands the Judge concluded that this objection also was one of the "objections without well grounded objection".

73.4 Tokanui 1D Sec 2: This was another block that Te Whakataute and other rangatira argued strongly for, on the grounds of customary and cultural significance and stating that:

(a) One of our prominent chiefs, Te Akanui, Rewi Maniapoto's grandfather is buried on the land;

(b) That the land had been especially reserved as a Papakāinga (residential) site for him and his hapu;

(c) That the land held important customary and cultural value; and

(d) That he had cultivations on the land.

74. The report is rather silent on the outcome, and as history has revealed, the same fate would befall this objection as all the rest.

75. You will recall in Te Whakataute's objections at para 43 above concerning these lands, the outcomes were:

75.1 The Tokanui C No 21B and Tokanui C No 20B blocks appear to have been dismissed also. However, we understand that these were exclusive Raukawa blocks of land;

75.2 Although the lawyers argued that, because of the strenuous

objections by the owners, the government's right to take the lands should be strictly controlled, and that unless the proceedings were a mere farce, fair consideration should be given to the objections. Although he then admitted that 'objections" under the section meant objections other than those that could be compensated by money, he emphasised the great sentimental value this land had to our tupuna, particularly Tokanui 1A No 2, money would not be of adequate compensation;

75.3 He further strongly argued the point concerning the almost landlessness of some of the owners and asked for full stress to be placed on this in the report; and

75.4 To which Mr Bold, who represented the Department, replied that "if those lands were taken from them, that, he thought was a matter for the Ministers consideration". The Minister of course, did nothing.

76. In the end the Judge recommended that, except for the lands that he had agreed to be excluded as a favour, and the urupa that would be reserved and fenced everything else could be taken, and concludes his report with the following remarkable statement:

> "….no income being derived from and no one living on these lands. I think they cannot be regarded as such an important factor in the owners support as to render it inadvisable to take them for an important public work…But in my opinion none of the objections are well grounded objections within the meaning of Section 18 of "The Public Works Act 1908"

77. This is the crux of the matter. Section 18 of the Act referred to here, obviously has no reference whatsoever that recognises or acknowledges the mana or tino rangatiratanga of our tupuna or the rights of Maori under the Treaty of Waitangi.

78. The main criterion of justification being the so-called "no income being derived" status or the "no one living on the land" status. That is no basis for protecting our rights.

79. And so, it appears that the views of the earlier officials memo of 8th June (para 51 above) are borne out by the inquiry decisions and the matters of Treaty protection and compliance sought by our Tupuna were all but totally discarded from consideration with the inquiry focussing solely upon the Section 18 provisions in PWA 1908.

80. The Crown failed to respond to the objections. The Crown rejected the objections of our tupuna on the grounds that a monetary payment would be suitable and acceptable compensation,[26] ignoring the fact they were not only taking our last remaining lands but severing for the rest of their lives the last customary ancestral lands of the ancestors and leaving many of our tupuna; and consequently ourselves; virtually landless, impoverished and destitute for the next 100 plus years.

81. However, the objections expressed by our Tupuna at the inquiry would not end with the inquiry. On 27 July 1910, the final day of the inquiry, Te Whakataute, Te Whiwhi Mokau, Te Winitana Tupōtahi, and 14 others submitted a letter[27] (ripoata) to the Minister for Native Affairs on behalf of Ngāti Tuwhakataha and Ngāti Taohua (the ancestral owners of these lands) in a last ditch attempt to convince the Minister explaining in some detail the depth of their concerns and objections:[28]

    81.1 Firstly, the petition assures the Minister that should the lands be taken it will cause serious animosity between the Government and Maori ("mehemea ki te riro tenei whenua i te kāwanatanga tera e tae ki tetehi raruraru nui ki waenganui I nga Maori me te Kāwanatanga");

    81.2 The petition then states that in the days of the elders, Kihikihi was our home and Hui Te Rangiora the Marae. When the Government took that we relocated it to Tokanui No 1B No 2 and again called our Marae Hui te Rangiora, and now the government has come again to take our lands;

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[26] Alexander, above n 11, at 576

[27] Alexander, above n 20, at 1263-1270

[28] Alexander, above n 11, at 599-600

81.3 These were the ancestral lands of our ancestors of ancient times passed on down to us the surviving descendants, (who are) still occupying these very lands (today);

81.4 The Marae that our ancestors occupied in their time, down to us the surviving descendants, the guardians of their Marae today, where they discussed and decided upon great matters, and welcomed and hosted great gatherings of people, is Hui te Rangiora. Thus we continue to occupy and use this Marae to assemble iwi and hapu;

81.5 The houses that they occupied are revered by us the descendants as heirlooms and care for, and protect, them accordingly;

81.6 Our Tupuna not only occupied these lands but are also buried all over them at the burial places of Pukekawakawa, (Te) Waiaruhe, and (Te) Pukahu;

81.7 Our ancestors fighting Pa are on these lands, at Pukahu, another at Pukekawakawa;

81.8 The cultivations that they worked are still being worked by us their descendants;

81.9 This is the only land that has been bequeathed to us by the word of our ancestors. All their Marae and houses were on it and their bones remain as proof of their retention and for the retention of us their descendants. We the descendants agree with their wish to retain it; and

81.10 There founding words were: Ko Mokau ki Runga, ko Tamaki ki raro, ko Mangatoatoa kei waenganui." This then is Mangatoatoa, the Marae, the house spoken of here.

Ko tenei ingoa ko te hapū…
E kore e kia he hapū….. ki te kore he Marae
Ko te Marae…
E kore e kia he Marae …..ki te kore he whare
Ko te whare
E kore e kia he whare…..ki te kore he tangata

> Ko te tangata…
> E kore e kia he tangata….ki te kore he whenua
> Kāti….ko Ngāti Taohua raua ko Tuwhakataha nga hapū
> Ko Hui te Rangiora te Marae, ko Hui te Rangiora the Whare
> Ko Ngāti Taohua me Ngāti Tuwhakataha nga hapū. Ko tenei whenua na Ngāti Taohua raua ko Ngāti Tuwhakataha I here mai o nga ra o mua iho. A tae noa mai ki tenei ra.
> Kāti ko matou tenei ko nga uri whakatupu ka here ānō i ēnei whenua I tenei wa.

82. The whole tenor of the petition from our tupuna primarily focused on the ancestral and customary significance to their whanau and hapū, of the Tokanui lands that were being taken. Lands, he emphasised, that were occupied from the time of their ancestors down to them. This was a last-ditch chance to convince the Crown of the seriousness of their loss and they went to great pains to emphasise in proverb and axiom the empathy and sincerity for that association.

83. Raureti Te Huia, and 47 others, signed a petition to Parliament regarding the takings under the Public Works Act 1908. The petition focussed on the landlessness of the hapu, and the cumulative impact the raupatu and public works takings had on our hapu's landholdings.

84. Te Whiwhi Mokau and his daughter Wiripine in September 1911 wrote to the Minister of Public Works appealing to him to leave them their lands in the Tokanui 1B and 2B blocks.

85. Our tupuna did not get a positive response from the Native Affairs Committee about their petition.

86. In 1923, Raureti Te Huia wrote again to the Native Minister regarding the two urupa that the Crown had promised to protect.[29] Our grandfather was able to locate one of the urupa for fencing, however the second one was unable to be located because the land had all been ploughed and grassed. The Crown had not protected our urupa as promised.

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[29] At 615-616

Summary

87. The impact of the takings in the Tokanui block needs to be seen in the wider context of what our tupuna had already suffered. All of their lands north of the Puniu River had been confiscated, and they did not participate in the Compensation Court. The Tokanui block represented the last of their major landholdings.

88. The decisions of the compensation court signals even more alarmingly the fruitlessness of our tupuna objections and the finality of the government's intent when it unilaterally decided to take the land.

89. The claimants say that the process and acquisition of the lands from Maori under the Public Works Act 1908 (and any subsequent amendments) was a gross breach of the Tiriti o Waitangi because it absolutely failed in every test to provide for, or comply with; even in the smallest possible way; the terms and articles of Te Tiriti o Waitangi. The claimants even venture to say that administrators and officials of the Act constantly displayed total ignorance for the most basic of Treaty rights that every one of the Maori owners were seeking in all their objections to the taking.

90. We further say that the Crown in its use of the Public Works Act 1908 to take Maori lands in the Tokanui Block for a Mental Hospital and Reformatory farm was a gross breach of Te Tiriti o Waitangi and ask the Waitangi Tribunal to find accordingly, and to further recommend the return of all the taken lands to the rightfully entitled descendant owners.

Use and Treatment of Mental Hospital lands

91. Much of the land that was taken for mental Hospital purposes was used for purposes far from the designated purpose of the taking and vast areas were to be eventually sold off to private Pakeha interests instead of being returned to the original owners. The only area to be used as designated in the taking was the Waikeria prison lands and the Pōkuru 1B block where the Tokanui Hospital was built.

92. The lands, following the takings, would in most cases sit idle and undeveloped for long periods, and would change from Mental hospital purpose to other departments and purpose including moving a large area into the Waikeria prison. Over the years the land would move between, lands and survey, Waikato Hospital Board, Agresearch, and schools and eventually some would end up in private pakeha ownership.

Establishment of Tokanui Hospital

93. In 1912 or there abouts, the Tokanui Hospital was establish in a single building on the edge of the existing campus and over the next 60-70 years would progressively occupy the 241 acre Pōkuru block and the 809 acre Tokanui Hospital farm block next door.

94. In 1936 the Hospital board wanted to build a village for staff and their families and around November 1936 another 61 ac of the Tokanui 1B 2B 3B was taken to build the village on. No compensation paid and the Crown agreed to exchange an equivalent area of land in lieu.

95. In 1970 the area of land that was used by the hospital as a farm, was transferred to Agresearch as a Crown Research Institute, a status that it retains to this day.

Closure of Tokanui Hospital

96. The closure of Tokanui Mental Hospital first surfaced at the Waikato Area Health Board meeting of March 1990. From 1990 through to 1992 planning for its closure gained more and more traction until in September of 92 the Area Health Board released plans to staff, setting out timelines for its closure,.

97. Finally, on 29 April 1993 CEO for the Waikato Crown Health Enterprise (CHE) Tony Cull announced that Tokanui would be closed by mid-June 1995. Tokanui was now officially declared surplus to requirements.

98. In response the people of the Mangatoatoa Marae called hui-a-iwi in May 1993, to consider the closure and return of the lands to the beneficially entitled descendant owners of the lands that the Hospital

sat on. As a result the people established the Manga Maniapoto Research Committee who received mandate to lodge a claim on behalf of the descendant owners, and in March 1993 the Tribunal registered the first of our claims over this block as the Wai 440 Tokanui claim. Robert Te Huia will present evidence concerning that claim this week.

99. The claim was amended in December 1997 and questions by the then Registrar Mr Melvin concerning the Raupatu boundaries were dealt with.

100. On 10 October 1996 the Manager for Regional Property regulation stamped as approved the recommendation from Crown Property Services for….

> "All parcels subject to this report declared surplus by Health Waikato Limited be offered back to the former Maori owners"

101. It is interesting to note the comments by Crown Property Services…

> "In each case of the described acquisitions there is no evidence to suggest that the properties were acquired on a willing buyer willing seller basis. The acquisitions, including the case of land exchange for Tokanui 1B 2B 3B Block, appear to be site specific and compulsory in nature"

Section 40 Offer back for Tokanui Hospital

102. In anticipation of a s40 offer-back, the Wai 440 claimants, H Maniapoto (chair), Wayne Taitoko, J. Johnston, Wai Emery, R. Elliot, sought and received mandate in November 1997 to enter into negotiations with Health Waikato Ltd to negotiate the offer back proposal for Tokanui.

103. The committee held a number of hui with Health Waikato from November 1997 and through most of 1998, to discuss and agree contingency matters concerning the surplus lands being offered back prior to an offer being made. A number of outcomes resulted such as:

103.1 securing all water and access easements to and on the property;

103.2 responsibility for "Paupers Cemetery";

103.3 securing of trees on site;

103.4 boundary fence alignment;

103.5 secure water supply; and

103.6 Sale and purchase agreement release to committee

104. On 23rd January 1998, I received, as chair of the Manga Maniapoto Research Committee, an "Offer of Sale" from LINZ (Land Information NZ) on behalf of the Waikato Crown Health Enterprise (CHE) for Health Waikato under the section 40 offer-back provisions of the PWA 1981 for purchase of the property.

105. The purchase price for the property was $4.75 million. The claimant committee were given 40 days to respond.

106. In February 1998 the committee travelled to Wellington and met with Tom Winitana of the Crown Forestry Rentals Trust to explore funding and other options for progressing the "Offer".

107. Directly afterwards we met with Ann Simpson and Shona MacAskill of the Office for Treaty Settlements to discuss using the Treaty settlements direct negotiations process to expedite the process. Apart from some good advice, no result ensued from the discussion.

108. On the same day the committee met with the Tribunal representatives, Dion Tuuta, Grant Phillipson, and (a much younger) Geoff Melvin, to explore "urgency Hearing" options. The Tribunal staff acknowledged the issue. They recommended that we complete research for our case to the required standard. The outcome of that was the commissioning of the Tokanui Block History Report, which Wayne will be presenting this week.

109. At the end of the day we met with Te Puni Kokiri to debrief and discuss strategies following the days hui.

110. The claimants commenced discussions with the vendor's agent immediately after we returned from Wellington. A number of

significant flaws were identified in the offer including the determination of valuation by the vendor which failed to take into account important matters such as:

110.1 The inalienable nature of Maori land under the Ture Whenua Act;

110.2 Treaty of Waitangi claims over the property;

110.3 Value of areas of cultural sensitivity;

110.4 Unsealed landfills and sewer treatment on the lands; and

110.5 Value of buildings condemned and due for demolishment.

111. Despite extensive discussions and strong objections by the claimants the vendor and the claimants were unable to come to binding agreements and the sale was subject to a number of constraining conditions that the claimants found great difficulty in accepting, not the least being the price, including such matters as:

111.1 the vendor deciding the status of ownership once purchased;

111.2 Contingent environmental liabilities concerning outdated sewer systems, and uncapped landfills;

111.3 Contingent compliance liabilities; and

111.4 Offer being for a single complete property instead of being for individual blocks and the refusal by the vendor to offer the properties separately.

112. In March 1998 the committee sought an extension of time from LINZ, to respond to the "offer". LINZ extended the offer for a further 26 days to 29th May 1998, amending the agreement (clause 3.2) accordingly.

113. The committee continued to negotiate with LINZ up to the expiry of the deadline without success and in the end negotiations failed and the offer lapsed. The land was then put through the OTS protection mechanism process in preparation for an application by the committee

for sites of significance and land-banking.

114. An issue arose with a cap on the regional landbank. The Tokanui lands exceeded the existing cap so we had to engage with the Crown to have the cap lifted.

115. The property was subsequently land banked around 1999 – 2000 where it still sits gathering dust and decaying to this day.

116. A number of times we have made the government aware of the decay and waste occurring by the lack of progress in settling and putting these lands to productive use, but to date a lot of words but very little action is the only result. We wait…and wait….and wait.

117. We say that the process followed by the Public Works Act, section 40 provisions, is a breach of " Te Tiriti o Waitangi" because it:

117.1 paid no attention whatsoever of the Treaty in its negotiations nor its process;

117.2 it failed to acknowledge nor inquired into the probability of the original taking as being a breach of Te Tiriti o Waitangi in the first place; and

117.3 It gave no consideration for the Articles of the Tiriti o Waitangi in making its recommendations for offer-back.

118. And we say that the Crown breached the Tiriti o Waitangi and continues to breach the Tiriti in its provisions and administration for S40 of the Public Works Act and we ask the Waitangi Tribunal to find accordingly, and recommend that the lands (and any other lands subject to Public Works offer back) be offered back at nil cost to the rightfully entitled descendant owners forthwith, and that the Crown acknowledges its wrong and makes proper compensation for the 100 year loss by the Maori owners of these lands.

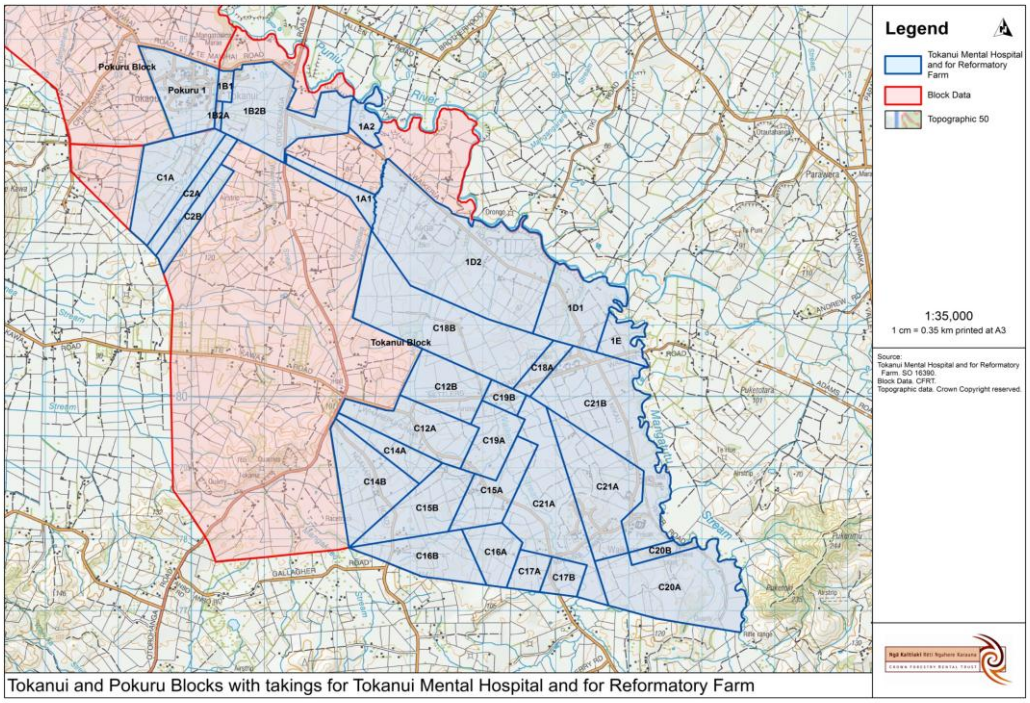
Ngāti Maniapoto Customary Interests in Waikeria

119. The Waikeria prison land is an area of shared and overlapping interests with neighbouring iwi, including Ngati Raukawa. We are the

descendants of the original Ngati Maniapoto owners, Te Whakataute, Te Whiwhi Mokau, Te Winitana Tupōtahi, Niketi Te Muraahi (great grandparents), their siblings, and children; all original owners, for the Tokanui 1D No 2 and the C18A and C18B blocks within the Waikeria Prison lands.

120. The Waikeria lands were taken under the Public Works Act 1908 for a Reformatory Farm and Tokanui Mental Hospital in the period 1908 to 1912 and onwards.

Map 1: Providing a block layout map of all the lands taken under the Public Works Act in the Tokanui Block:



Tokanui and Pokuru Blocks with takings for Tokanui Mental Hospital and for Reformatory Farm

The Prison

121. The Reformatory Farm, which was later to become the Waikeria Prison in 1912 to 1916 was expanded and later, in 1925 or thereabouts, became the Waikeria Borstal Institution and later in 1961 became the Waikeria Youth Institution, and eventually became the current Waikeria Prison that is the subject of this submission.

122. The Prison lands comprised a number of land sub-divisions within the Tokanui Block originally taken from both Ngāti Maniapoto and Ngāti

Raukawa tribal members.

123. Our great grandfather Te Whakataute and other of our Maniapoto tupuna were original owners of a number of these blocks.

124. The Waikeria Prison area comprises approximately 3172 acres or more (1280.6ha)

Table 1: Raukawa Owned Blocks in Waikeria

Land blocks owned by Raukawa Maori comprised some 1,743acres (705ha).

BLOCK TITLE	**AREA (Acres)**	**PURPOSE & DATE OF ALIENATED**	**OWNERS AFFILIATION**
Tokanui C20A (formally Sec 5)	462a.2r.38p	Public Works Act - Reformatory Farm, NZ Gaz 1910/3672	Raukawa
Tokanui C20B	35a.3r.13p	Public Works Act - Reformatory Farm, NZ Gaz 1910/3672	Raukawa
Tokanui C21A (formally Sec 5)	674a.0r.15p	Public Works Act - Reformatory Farm, NZ Gaz 1910/3672	Raukawa
Tokanui C21B	494a.3r.25p	Public Works Act - Reformatory Farm, NZ Gaz 1910/3672	Raukawa

Table 2: Maniapoto Owned Blocks in Waikeria

The balance of the Land blocks owned by Ngāti Maniapoto and other Maori comprise some 1,420 acres (575ha).

BLOCK TITLE	**AREA (Acres)**	**PURPOSE & DATE OF**	**OWNERS AFFILIATION**
PT Tokanui 1D No.2		1908	Ngāti Maniapoto - Hepi Te Huia and 92 others
Pt Tokanui C12A	231a.3r.31p	NZ Gaz 1909/2067	Ngāti Maniapoto owners

Tokanui C12B	187a.3r.13p	Public Works Act - NZ Gaz 1910/3719 Tokanui Mental Hospital	Ngāti Maniapoto - Moihi Te Riria & 3 others
Pt Tokanui C15A	158a.3r.21p	NZ Gaz 1909/2067	Ngāti Maniapoto owners
Tokanui C17B	57a/0r/38p	Public Works Act - NZ Gaz 1910/3719 Tokanui Mental	Ngāti Maniapoto – Hera Putini
Tokanui C18A	56a.3r.23p	NZ Gaz 1909/2067	Ngāti Maniapoto owners
Tokanui C18B	531a.0r.5p	Public Works Act - NZ Gaz 1910/3719 Tokanui Mental Hospital	Ngāti Maniapoto - Hepi Te Huia and 15 others
Pt Tokanui C19A	136a.1r.39p	NZ Gaz 1909/2067	Ngāti Maniapoto owners
Tokanui C19B	44a.1r.op	Public Works Act - NZ Gaz 1910/3719 Tokanui Mental Hospital	Ngāti Maniapoto - Tiwa Kingi
Tokanui 1E	76a.1r.0p	Survey Lien	Survey Liens

Waikeria and Ngāti Raukawa Settlement

125. The Waikeria Prison lands have recently been included in the Ngāti Raukawa settlement of their historic grievances with the Crown. Their inclusion is by way of a deferred selection property, whereby Ngāti Raukawa has two years from their settlement to purchase the lands. If they chose not to purchase it, they will retain a first right of refusal over the property for 172 years. This is in spite of the fact that there were Ngāti Maniapoto owners included in the land blocks that the prison was built on.

126. The claimants want the Crown to retain the lands originally owned by Ngāti Maniapoto tupuna so that it can be returned to their descendants.

Table 3: Ngāti Maniapoto Land Blocks to be set aside.

BLOCK TITLE	AREA (Acres)	PURPOSE & DATE OF ALIENATED	OWNERS AFFILIATION
PT Tokanui 1D No.2		1908	Ngāti Maniapoto - Hepi Te Huia and
Pt Tokanui C12A	231a.3r.31p	NZ Gaz 1909/2067	Ngāti Maniapoto owners
Tokanui C12B	187a.3r.13p	Public Works Act - NZ Gaz 1910/3719 Tokanui Mental Hospital	Ngāti Maniapoto - Moihi Te Riria & 3 others
Pt Tokanui C15A	158a.3r.21p	NZ Gaz 1909/2067	Ngāti Maniapoto owners
Tokanui C17B	57a/0r/38p	Public Works Act - NZ Gaz 1910/3719 Tokanui Mental Hospital	Ngāti Maniapoto – Hera Putini
Tokanui C18A	56a.3r.23p	NZ Gaz 1909/2067	Ngāti Maniapoto owners
Tokanui C18B	531a.0r.5p	Public Works Act - NZ Gaz 1910/3719 Tokanui Mental Hospital	Ngāti Maniapoto - Hepi Te Huia and 15 others
Pt Tokanui C19A	136a.1r.39p	NZ Gaz 1909/2067	Ngāti Maniapoto owners
Tokanui C19B	44a.1r.op	Public Works Act - NZ Gaz 1910/3719 Tokanui Mental Hospital	Ngāti Maniapoto - Tiwa Kingi
Tokanui 1E	76a.1r.0p	Survey Lien	Survey Liens

127. A number of us claimants drafted and presented a number of submissions to the Maori Affairs Select Committee opposing the inclusion of the Ngäti Maniapoto hapü lands within the Waikeria Prison estate in the deferred selection property section of the Raukawa Claims Settlement Bill 2013. The submissions were provided by the Wai 2015, 2313 and 2314 claimants and by Nga Uri o Te Whakataute who are the representatives.

Wahi Tapu

128. A number of wahi tapu were identified by the petitioners and in the subsequent evidence presented to the Public Works inquiry. Some of these are covered by Wayne Taitoko's report an "A History of Tokanui" and I defer to him for that information and will not cover those details again except to highlight their importance to us and our hapū. Others are taonga tuku iho that were taken by Raupatu in 1864 and others by other dubious means.

Pukekawakawa:

129. This is an ancient urupa that is situated in the middle of the lands that were taken and currently being used by Agresearch. The urupa is administered by a Ture Whenua Maori Act trust. Despite the land having an access easement included access is impassable because of a 4-5 metre vertical drop to the road frontage. Although Agresearch had agreed around to provide alternative access via a common access with the "Paupers Grave" also located on that property, no agreement yet has been completed.

Tokanui:

130. This is the Pa of a famous rangatira called Kiharoa. This is also the Pa that the Tokanui block derives its name from. The Pa is one of a cluster of three Pa in close proximity to one another, the other being Whiti te Marama, and Marama te Titiro. The Pa was another one of those "absolutely inalienable" urupa determinations by the Native Land Court of the time. The Pa was not surveyed for almost a ninety odd years. However, the surrounding land was sold to a Pakeha and the Pa was absorbed by default into the surrounding title.

131. In the early to mid 1990's myself and a number of kaumātua opposed an application by a quarry owner who had his quarry on the face of the steep eastern cliff-face of the Pa who sought a resource consent to destroy the Pa to provide rubble for his quarry. Fortunately, we were successful and arrived at an agreement for the continued preservation of the Pa. However, despite this, the Pa is still highly vulnerable to

damage by slippage and erosion caused by undermining and quarry activities at its base. The local body (Otorohanga District Council) were active in supporting the case even to the point of looking at purchasing one of the Pa sites for preservation.

132. Recently, I assisted some surveyors, commissioned by the Maori Land Court, to complete a survey over the Pa site property. I do not know what has become of it since it was surveyed however.

Te Pukahu

133. This is an ancient Pa of one of the earliest peoples of this region and as Wayne's report explains, this block was declared "absolutely inalienable" by the Native land court and was vested in a number of rangatira as trustees over the urupa and land. However, the land was never surveyed by the Native land court and got "absorbed" in a subsequent title to a pakeha farmer in the mid 1900's. This land is now land-locked and inaccessible to our hapū and whanau. Over recent years the farmer has used the pa site as a sand pit for material for his cattle races on the farm. I had to ask the District Council to intervene before he would stop destroying our urupa. Our uncle Ngā Rongo Kaiwaka is buried there.

134. Unlike the Tokanui Pa unfortunately, this urupa was not one of those on the schedule of urupa to be surveyed by the Maori Land Court, and it appears that it may not have been done.

Te Waiaruhe:

135. Some of the petitioners spoke of the place in the Tokanui 1A 2A where Rewi Manga Maniapoto lived with his Ngāti Kaputuhi people. The name of the place was Te Waiaruhe.

136. The Pa is situated part on private land in Pakeha ownership and part on the lands that were later taken for the Tokanui Mental Hospital. The land is a significant site to Ngāti Kaputuhi, as it is to our hapū, being the original site of the ancestral tupuna whare "Kaputuhi" and where their tupuna lie to this day. The land and area holds significant spiritual

and cultural value to them still.

137. We ask the Tribunal to recommend that the part of the urupa on Crown land, along with proper access included, be returned to the rightful owners.

Mangatoatoa and Paiaka Pa

138. Mangatoatoa is a famous fighting Pa of Ngāti Maniapoto being constructed in the mid to late 1700's period by Te Kanawa and his Ngāti Maniapoto hapū in anticipation of the pending invasion by all of the Southern and Eastern tribes of the motu, and rising to fame as the key fighting Pa of Ngāti Maniapoto during the period of the famous Peehi Tukōrehu and Te Wherowhero.

139. Mangatoatoa was such that it was imbued with the whakatauaki….

> Mokau ki runga
> Tamaki ki raro
> Ko Mangatoatoa ki waenganui

140. In reference to the unavenged deaths of Rungaterangi in Mokau, and his father Te Kawa Irirangi, in Tamaki. This saying was in modern times, to become the given description of the extent of the Tainui waka.

141. The Pa site is located on the northern banks of the Puniu River and was taken under the confiscation. The site is now in private Pakeha ownership.

142. The Paiaka Pa was located in front of Mangatoatoa, on a hillock next to a stream, some 100-200 metres in a northward direction. Paiaka was Peehi Tūkōrehu's fighting General and aid.

Haere-awatea:

143. Haereawātea is another famous fighting Pa of Ngāti Paretekawa being constructed in the early 1800's period by Peehi Tukōrehu and his Ngāti Paretekawa hapū after the burning of Mangatoatoa. The Pa is situated at the point where the Main trunk Railway crosses the Puniu River.

Pōtaetihi, Pōkuru, and Whareraurekau:

144. These are all ancient Pa of Ngāti Paretekawa situated on the peaks of Kakepuku. They are all on either DOC or Local Body estate on the Kakepuku Maunga. They are important wahi tapu and taonga of Ngāti Paretekawa and others and the hapū wish to ensure their protection from industrial, commercial or other damaging practices.

145. We ask that the tribunal recommends that these Pa sites, along with proper access included, be returned to the Ngāti Paretekawa hapu.

Hui te Rangiora:

146. The petitioners spoke of this Pa on a couple of occasions during the Tokanui objections and in separate communications with the Minister. As they described, Hui te Rangiora was the original Council house (Te Runanganui) of the Chiefs of the Otāwhao district of Kihikihi and Te Awamutu. This one was destroyed by Government troops in 1864. Another one was established on the southern banks of the Puniu River in the late 1800's period, (on what was to become Tokanui A1 No2 block) but was taken by the Government under the Public Works in 1910.

147. The claimants ask that the Tribunal recommends that the Crown provides for the replacement and re-establishment of Hui te Rangiora, at a place of the Ngāti Paretekawa (ki te Raki) claimants' choosing north of the Puniu River and makes proper compensation for the destruction, sacking, and burning of the tupuna and the 150 year loss to the rightfully entitled descendant owners of the lands and tupuna.

Orakau:

148. Orakau was the Pa where our tupuna and others, although vastly outnumber, made their last gallant defence of their lands north of the Puniu River, against invasion by British and Colonial troops hell-bent on seizing their lands. Many gallant warriors fell on that hallowed ground in the three days of that battle in the last days of March1864. The lands were confiscated by the Crown and Ngāti Paretekawa, whose

lands they were, lost all ownership and right. The land has remained in Pakeha hands and ownership ever since. However, our ancestors have held the kaitiaki responsibility since that time down to us their descendants today. It has always been their desire, and ours behind them, that those now sacred grounds should be return to the rightful owners of the land.

149. The Claimants would like to see the Pa site and the urupa and wahi tapu associated with the site, with proper access included, returned to the mana whenua hapū, Ngāti Paretekawa, for the better protection and kaitiaki of the taonga and the benefit of themselves and the Ngāti Maniapoto people.

Impact on us and our Tupuna

Alienation of Lands

150. The impact of the takings in the Tokanui block cannot be understated.

151. Of the 10,205 acre Tokanui block only approximately 400 acres of land remained in Maori ownership today. The end result being that over 75% of our last remaining lands had been alienated from our possession.

152. For all intents and purposes, the Crown's taking in the Tokanui block was, confiscation all over again. However, unlike the raupatu in the 1860s, there was nowhere else for our people to go. They had no other lands. Now, we have no other lands also.

153. We say again that these takings under the Public Works Act are a gross breach of Te Tiriti o Waitangi

Sufficiency of Lands

154. The Public Works Act 1908 did not require the Crown to ensure that Maori owners were left with sufficient lands for their needs. This was in contrast to the Native Land Act 1909.

155. Further, government officials declined to accept that sufficiency of land

needed to be considered when taking Maori-owned lands.[30]

156. The result for us is clear. We do not have sufficient lands to sustain ourselves or our families. We are not able to guarantee our mokopuna will be able to sustain themselves or their families.

157. We say that the taking of these lands under the Public Works Act are a gross breach of Te Tiriti o Waitangi because they failed to give effect to the Article two and three Treaty rights of Maori.

Petitions

158. Despite, various petition hearings, conducted by officials of the Government of the time, the officials took little or no consideration for the significance or the values of our tupuna, imposing instead their own terms of value over those of our Tupuna, citing such things as "not living on land", or "not leasing the land" or not "deriving income" as determinants for dismissing their concerns.

Choice of Site for Hospital and Farm

159. We believe that the alienation of nearly 3500 acres of our lands for the use of a prison and mental hospital was a deliberate act of the government to again punish those who had chosen to challenge their authority.

160. They left us between the mad and the bad. This should not be underestimated. We remember when prisoners would escape from the prison and we would have to stay inside our houses until the police and prison authorities had the situation under control.

161. Or when we heard the siren going from the Whare Porangi and knew that someone had escaped which cause fear amongst us. These memories have no place in a childhood.

162. For our poor unfortunate tupuna, this time there was no escape route, and nowhere else left to go. For our Tupuna they and their uri

[30] Alexander, above n 11, at 627

(descendants) were trapped for the rest of their lives in poverty, destitution, and the pain and suffering of an oppressed and trampled people without hope or future on their own land in their own country.

163. We argue that the taking of these particular lands was punitive in intent, and, the Tokanui Block was taken because it was the primary lands of the so-called "rebel" leaders and rangatira who opposed the Crown invasion of Waikato and of whom the Crown had not yet been able to exact retribution. In particular the venerable Ngāti Maniapoto rangatira Rewi Maniapoto and his kin, and the gallant defenders of Orakau. We hold this view because:

163.1 According to the Inspector General of Mental Hospitals and Prisons, the preferential site for the Public Work was close location to the Railway station at Te Mawhai.

163.2 The Tokanui block, and the lands that were taken were well remote from the railway. The railway station was located in the Pōkuru and Kakepuku blocks;

163.3 The lands and home of Rewi Maniapoto were taken and all the other defenders of Orākau would lose their last remaining lands in the taking.

O'Malley states that:

> "The unique rauputu-related grievances of Ngati Maniapoto and other Rohe Pōtae iwi have consequently never before been fully inquired into by any official body".[31]

And so it is for the matter of Public Works takings in Te Rohe Pōtae.

165. Today is the first, and probably the only and last chance, to have these matters addressed by a proper authority, the Waitangi Tribunal.

Conclusion

166. Pea, ka maea he wahi iti kei roto te Ngākau, te whatumanawa, o te hunga mahuetanga ake e tau nei I tenei ra. Kei a koutou o te roopu

[31] Wai 898 #A022, O'Malley, *Te Rohe Pōtae War and Raupatu,* at 823

whakamana te tiriti te whakaritenga o ēnei tutukutanga kōrero kia ki ai kua ea, kua oti. He hiahia, he moemoea, ranei naku.

167. Engari, kāore e mutu i konei nga raruraru e pa ana ki o matou whenua. Kei te haere tonu mai ki muri ki au he raruraru nunui rawa ki ēnei kua korerotia ake nei. Engari, ma ētehi tenei take hei kokiri, kāti

168. He mutunga kōrero maku. Ko ēnei ra nga pitopito kōrero o aku tupuna mo te timatatanga o te tino poharatanga o Ngāti Paretekawa.

> Kia hoki ānō au ki aku mihi mutunga kia koutou I te tīmatanga o aku whakatakoto kōrero ki mua kia koutou ki Mangakotukutuku……
> "I timata te ngaro whenua I mua o te Tiriti o Waitangi, he aroha te take"
> "Heke iho ki the nohonga o te Hāhi kei konei, ko te aroha ānō te take"
> "Heke iho ki te tāenga mai o te ture pakeha, ko te tahaehae te take"
> "Tae atu ki te pakanga me te muru whenua, ko te raupatu te take"
> Heoi ra, tae ki nga whenua mutunga o aku tupuna ki tuatonga o te Aukati nei, i korerotia nei e matou i tēnei ra, me pewhea ānō ra hei kōrero kia koutou.
> Ma koutou Te Roopu Whakamana te Tiriti hei kia ai…..
> 'ko te mahi poharahara a te Karauna ki aku tupuna ka ki ai, i he tino he e ratou i te Tiriti".
> Tenei pea ka kia ai ko ea ko ea te wāhanga ki aku matua tupuna.
> Kia takoto maarie mai i raro i nga manaakitanga o nga atua.

169. No reira koutou o te roopu whakamana te tiriti. Kua rongo koutou ki nga tangi e tangi nei enei karangaranga hapū i taka nei te whakatauaki o te waka nei o Tainui…"Ko mokau ki runga, Ko Tamaki ki raro, Ko Mangatoatoa ki waenganui tenei e mihi e tangi poharahara nei"

170. No reira. Ka āpiti hōno, Ka tātae hōno, koutou ra te hunga kua huri i whakahuahuatia mai I tēnei ra, hoki atu hoki atu, hoki atu koutou.

171. Ka āpiti hōno, Ka tatae hōno, tātou ra te iti te rahi e tangi nei mo rātou, tēnā koutou, aa tēnā tātou, ka huri.

Ko matou ra ēnei ko:

Te Pikikōtuku

Ko Te Kawenata

Ko Te Whiwhi

Ko Rangimatamahue

Ko Erena