IN THE WAITANGI TRIBUNAL	WAI 898
IN THE MATTER	of the Treaty of Waitangi Act 1975
AND	
IN THE MATTER	of a claim by **STEPHEN REWI WALSH, RANGI JOSEPH, GLEN KATU, LESLIE STEWART** and **HENRY BAKER (Wai 753)**
AND	of a claim by **TIRITI O WAITANGI TAHITI (Wai 1585)**
AND	of a claim by **HINEKOPA BARRETT-SIMPSON** and **MAXINE KETU (Wai 2020)**
AND	of a claim by **WAYNE DOUGLAS JENSEN** and **DENIS GRENNELL (Wai 2090)**
AND	of a claim by **WAYNE JENSEN** and **MOEPATU BORRELL (Wai 586)**
AND	of a claim by **NGAHAU CUNNINGHAM (Wai 1396)** for and on behalf of the **TRUSTEE OF TAUMATATOTARA A5**

AMENDED STATEMENT OF CLAIM ON BEHALF OF NGĀTI KINOHAKU

DATED the 16th day of December 2011

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AMENDED STATEMENT OF CLAIM

A. NGĀ KAITONO – THE CLAIMANTS

1. This Amended Statement of Claim is filed on behalf of the following claimants and their claims ("the claimants").

   1.1 Stephen Rewi Walsh, Rangi Joseph, Glen Katu, Leslie Stewart and Henry Baker, a comprehensive claim for and on behalf of ngā hapū katoa o Ngāti Kinohaku, Wai 753;

   1.2 Te Tiriti o Waitangi Tahiti, for and on behalf of Ngāti Kinohaku, Wai 1585;

   1.3 Hinekopa Barrett-Simpson and Maxine Ketu, for and on behalf of ngā uri o Huihana Parehuiroro, me ngā hapū o Ngāti Kinohaku me Ngāti Maniapoto, Wai 2020;

   1.4 Wayne Jensen and Denis Grennell for and on behalf of Ngā uri o Iriaka Puhia me Rerehau Haupokia, Ngāti Urunumia, Ngāti Rangatahi, Ngāti Hari, Ngāti Waiora me ngā hapū katoa o Ngāti Kinohaku, Wai 2090;

   1.5 Moepatu Borell and Wayne Jensen, for and on behalf of (Richard Nga Hua o Te Tau Ngatai - the original claimant) Motiti Marae, Ngāti Te Putaitemuri, Ngāti Tauhunu, Ngāti Turiu me Ngāti Kinohaku, Wai 586; and

   1.6 Ngahau Cunningham, for and on behalf of the Trustees and beneficial owners of Taumatatotara A5 block, Wai 1396.

2. All of the current claimants are trustees and/or beneficiaries of the Ngāti Kinohaku Trust ("the Trust"). The Trust is a private trust established to represent and advance the collective interests of Ngāti Kinohaku before the Waitangi Tribunal and other matters as set out in the trust deed.

3. All of the claimants trace their descent from the eponymous ancestor Kinohaku and her son Tangaroakino. Over time, hapū evolved under the banner of Ngāti Kinohaku.

4. Ngāti Kinohaku developed a distinct identity from her brother, Maniapoto (Ngāti Maniapoto). In addition, claimants acknowledge they are acting as a collective who claim ancestry to a number of other hapū with shared whakapapa and/or history:

4.1 Ngāti Huiao, Ngāti Tarahuia, Ngāti Rarua, Ngāti Rangitahi, Ngāti Te Kanawa, Ngāti Peehi, Ngāti Hinekuku, Ngāti Korokino, Ngāti Toa, Ngāti Werawera, Ngāti Te Peehi, Ngāti Korokino, Ngāti Hinekuku, Ngāti Maru, Ngāti Kahinga, Ngāti Urereko, Ngāti Te Whatu, Ngāti Uenuku, Ngāti Mahuri, Ngāti Pukawai, Ngāti Paretona, Ngāti Tionga, Ngāti Waipuia, Ngāti Kawakai, Ngāti Tuaikoia, Ngāti Kairarunga, Ngāti Kahumoana, Ngāti Pareteata, Ngāti Turangapa, Ngāti Tinirau, Ngāti Maui, Ngāti Huhu, Ngāti Hinewahi, Ngāti Tanetinorau, Ngāti Te Ara, Ngāti Huiao, Ngāti Manawahi, Ngāti Uai, Ngāti Turiu, Ngāti Pakira, Ngāti Hinekino, Ngāti Waiora, Ngāti Hari, Ngāti Urunumia, Ngāti Tunahore, Ngāti Waiharoto, Ngāti Hikataua, Ngāti Uai, Ngāti Waipuia, Ngāti Tuaikoea, Ngāti Kairarua, Ngāti Hamupaku, Ngāti Tahinga, Ngāti Rora, Ngāti Uwai, Ngāti Pakira, Ngāti Tarahini, Ngāti Turiu, Ngāti Pakira Ngāti Te Rangikorongata, Ngāti Kaia, Ngāti Parekaitini, Ngāti Waipare, Ngāti Matau, Ngāti Ariki, Ngāti Hia, Ngāti Maniapoto

B. TAKIWA – THE CLAIM AREA

5. Whilst not consent to the Native Land Court's system of boundary definition, the claimants say that their ancestral takiwa is largely aligned with the boundaries of the Kinohaku East block, claimed by Kinohaku's sons Tuhekengatao and Tangaroakino Tuheke.

5.1 The claimants acknowledge the interests of other hapū in their takiwa, including the rights of Ngāti Hinekino whose rights in the Kinohaku East lands were derived through tuku whenua.

6. Mana whenua is acquired through tikanga, including take tupuna, tatau pounamu, tuku whenua and raupatu, defining ancestral estates over a period of time and continuing to be exercised by succeeding generations. The ancestral takiwa of Ngāti Kinohaku is defined by traditional boundary markers, some of these markers include, but are not limited to:

6.1 Arapae; Awaroa; Hautapu, Hērangi; Huikōmako; Kaikuri, Kakepuku; Kiritihere; Koropupu; Makahinga; Mangaokewa; Mangapu; Marokopa; Motiti; Ngahuihuinga; Ngarara; Nukungaire; Ōtaranga; Pa Nikau, Pakeho; Pāroa; Pātiti, Peehimatea. Piha; Potea; Pukehokio; Pukekohatu; Puraho; Rakaunui; Rakeimatataniwharau, Taiaue; Tarapatiki; Te Koipo, Te Mānia; Te Rua o te Ata; Te Uira; Te Waitere; Tirotiro Urupa; Tupahau, Turakina, Waikato; Waipa; Waipapa; Waipuna; Wairau; Hauturu; Hikurangi; Kawaunui; Kinohaku, Mairoa; Makahinga; Mangarama; Mangatea; Mangawhitikau; Mapauriki; Matapari; Moeatoa; Ngāhuinga; Ngakuraho; Ototoika; Otunui; Owhiro; Paratui; Pakeho; Panikau; Pinga; Potea; Puke Rangiora, Pukearuhe; Pukekohatu; Pukerangiora; Pukerewa; Puketoa; Rototapu; Taiue; Tarapātiki; Tauhua; Te Ana a Taretai; Te Anga, Te Aukawa, Te Awa Koura; Te Horua; Te Mahoe, Te Miro a Huiao; Te Puipui; Te Rua o te Manu; Te Rua o te Taniwhā; Te Tuhi o Te Ao Mārama; Te Uira; Te Waipatoto; Tirotiro; Tirua; Waikawa; Waikawau; Waimahirua; Waipuna; Whataroa; Maraeroa; Hurakia; Ketemaringi; Aria; Ohura; Pakingahau; Papawaka; Maraekowhai; Ongarue; Ounutae (Native Reserve); Awakino (Native Reserve)

6.2 Within their traditional rohe, Ngāti Kinohaku held numerous kainga, urupa, waahi tapu and sites of significance.[1]

6.3 Below is a map showing an outline of the Ngāti Kinohaku inclusive and exclusive takiwa which includes the 20 mile land block survey which extends into the sea, where both inclusive and exclusive Ngāti Kinohaku rights exist:

[1] Including all waterways, rivers, caves, swamp areas and other natural resources

C. NGĀ TAKE – THE CLAIMS

7. The claimants have filed separate claims and maintain their own autonomy and independence in respect of their respective claims, including the reservation to provide further particulars as to boundary, rohe, whakapapa and/or any other matters. However, for the sake of efficiency, the claimants set out their pleadings in this single Amended Statement of Claim under the mana of Ngāti Kinohaku. Ngāti Kinohaku mana incorporates the responsibility of exercising inclusive and exclusive tikanga over estates to be described.

8. The claimants also adopt the pleadings set out in the generic statement(s) of claim to be filed on behalf of all claimants and in so far as they relate to the Ngāti Kinohaku experience.

D. BACKGROUND TO THE CAUSES OF ACTION – THE TREATY OF WAITANGI & TE OHĀKI TAPU

9. Up to and as at 1840, Ngāti Kinohaku exercised their own particular forms of tino rangitiratanga in respect of their all of their lands and resources.[2] The claimants further assert that their tupuna had developed trade within

[2] Claimants evidence

and outside their iwi boundaries and a prosperous, healthy and vibrant society, fiercely independent but eager to share that prosperity, existed.

10. At least two Ngāti Kinohaku rangātira signed the Treaty of Waitangi ("Te Tiriti") in 1840[3]. Many other Ngāti Kinohaku rangātira did not sign the document.

11. In this sense, Ngāti Kinohaku were indifferent to Te Tiriti; whilst Ngāti Kinohaku did not reject the Queen through Te Tiriti; they believed that so long as they retained mana whenua, their lives, and those of Ngāti Kinohaku communities, would remain unchanged. This was a similar stance to other adjoining hapū with shared whakapapa and boundaries.[4]

12. In 1862, an aukati line was established.[5] The use of the aukati was to control movement of people across or through sensitive areas by prohibiting or limiting access to them. At this time and similar to as at 1840, Ngāti Kinohaku leaders including Haupokia and Ngatai were still very much in control of their lands.[6]

13. By 1883, Ngāti Maniapoto rangatira, including those of Ngāti Kinohaku ("iwi leaders") acknowledged that the strength of the aukati was being reduced by the growing momentum of settler and Crown activities and that if they continued to enforce the aukati, they would eventually bring about suffering and loss for their communities.[7]

Background to Te Ohāki Tapu

14. The area that came to be known as *Te Rohe Pōtae* was originally made up of hapū and iwi mostly from Waikato to the north, Ngāti Tuwharetoa to the east, Ngāti Hikairo to the west and Whanganui to the south.

15. These traditional boundaries have been expressed in the following manner:

> "Mokau ki runga Tamaki ki raro Mangatoatoa ki waenganui Pare Waikato Pare Hauraki. Ko te Kaokaoroa o Pātetere, ko te Nehenehenui tonu e.

[3] Haupokia Te Pakaru signed the Te Tiriti on 20th March 1840 at Kawhia
[4] Marr, #A78, *Te Rohe Potae Political Engagement Part 2: 1882 -1886,* p 1274
[5] Marr, #A78, p 738
[6] Marr, #A78, p 148
[7] Marr, #A78, *Te Rohe Potae Political Engagement Part 1: 1864 -1886,* p 24

From Mokau in the south to Tamaki in the north, Mangatoatoa is at the centre. From the mouth of Waikato River in the west to all of Hauraki."[8]

The Ngāti Kinohaku rohe sat at the nucleus of these boundaries.

16. The boundaries of *Te Rohe Pōtae* were not only used to define boundaries, but they also represented the essential features of the territory with a protective external boundary under Māori control and continuing Māori authority within those boundaries.[9]

17. In order to prevent suffering and loss for their communities, iwi leaders set about achieving a controlled opening of their boundaries whereby they never ceded their sovereignty but at the same time allowed Pākeha settlement.[10]

18. As part of the exercise of their tino rangatiratanga (as guaranteed by Te Tiriti) the iwi leaders, supported by their hapū, negotiated agreements with the Crown resulting in the development of Te Ōhākī Tapu. This was to ensure that iwi leaders maintained tino rangatiratanga over their affairs and taonga, including their lands and resources, whilst at the same time seeking to reap the benefits of the settler economy. [11]

19. The claimants say that Te Ōhākī Tapu was specific to their area and an extension of the tenets already entered into, agreed and guaranteed to them under Te Tiriti. In this context, the claimants assert that Te Ōhākī Tapu was the ultimate expression of tino rangatiratanga.

20. Whilst suspicious and cautious at times, the iwi leaders consistently relied on the goodwill and undertakings given by the Crown that Te Ōhākī Tapu comprised mutually beneficial covenants made in good faith and in the spirit of agreement that all parties would honour their respective parts and roles.

21. For the Crown, Te Ōhākī Tapu represented the means by which the Crown were able to converse and engage with iwi leaders and lessen the likelihood of any obstacles for it's own objectives for Te Rohe Potae,

[8] Marr, #A78, p 29
[9] Marr, #A78, p 46
[10] Marr, #A78, p 1276
[11] Marr, #A78, p 741

starting with the laying out and construction of the main trunk railway line and then the lands and resources within those boundaries.

Elements of Te Ohāki Tapu

22. Te Ohāki Tapu was in effect a series of agreements entered into between Ngāti Maniapoto (including Ngāti Kinohaku), Ngāti Raukawa, Ngāti Tuwharetoa, Whanganui, Ngāti Hikairo and the Crown between approximately 1883 and 1886.

23. The iwi leaders considered Te Ōhākī Tapu as a solemn and sacred compact with the Crown[12] and with the additional protection of being binding on future governments.[13]

24. The terms and conditions of Te Ōhākī Tapu involved a number of steps, namely:

24.1 A meeting between Minister Bryce and Ngāti Maniapoto chiefs at Whatiwhatihoe on 16th March 1883 and an exchange of letters between the respective parties, the terms of which included:[14]

a) A letter from Wahanui and others dated 16 March 1883 addressed to John Bryce allowing a surveyor to proceed through Te Rohe Pōtae to explore for the railway route, on the conditions that the surveyors hands were not 'spread out' and he was only to go on the duty he was sent i.e. the survey. The letter also indicated that the government was not to allow applications for surveys in their district until the question was fully discussed and that the rangatira intended sending a petition to parliament for a more satisfactory law for their lands; [15] and

b) A letter from Bryce dated 16 March 1883 addressed to the same chiefs accepting the surveyor was completing the exploratory trip for "one duty" namely the

[12] Marr, #A78, p 767
[13] Marr, #A78, p 983
[14] Marr, #A78, pp 771 - 777
[15] Marr, #A78, pp 773 - 774

exploration of railway routes. It was agreed that surveys would be delayed in the hope the "principal men and the Ngāti Maniapoto generally" would apply to the Court for surveys and determination of title to land. Bryce also looked forward to the petition asking it state clearly the alteration wanted. [16]

24.2 A petition from Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tuwharetoa and Whanganui was presented to the House of Representatives on 26th June 1883.[17]

24.3 The signatories were given as Wahanui, Taonui, and Rewi Maniapoto and '412 others'.[18]

24.4 The petition explicitly referred to the laws depriving the petitioners of the privileges secured by Te Tiriti, which confirmed the exclusive and undisturbed possession of their lands.[19]

24.5 The petitioners: [20]

a) Wanted their remaining territory within their aukati (the boundaries of which they gave) within which Europeans had not made any deals, to be recognised and protected for them and their descendants 'forever';

b) Did not want the Land Court or current land laws operating and they wanted all practices associated with the Land Court (fraud, drunkenness, demoralisation etc) kept out;

c) Wanted to be able to ascertain and divide the territory land according to iwi and hapu boundaries and the claim of each individual within these themselves without the Land Court;

[16] Marr, #A78, pp 775 - 776
[17] Marr, #A78, pp 869
[18] Marr, #A78, pp 869
[19] Marr, #A78, p 870
[20] Marr, #A78, pp 870 - 874

d) Wanted these divisions they decided on to be legally confirmed by recognised and authorised persons so they would be legally recognised;

e) Wanted it made illegal to ever sell any of the lands. They were willing to allow leasing by owners if this was done publicly and by public auction;

f) If this was agreed to and implemented, then they were willing to allow such benefits as roads and railways and to cooperate in the progress of the North Island.

24.6 An application by the iwi leaders to the Native Land Court ("the Court") dated 1 December 1883 to survey the external boundary of their territory:[21]

a) The application included the statement of boundaries of the land. The chiefs were very clear and this confirmed their insistence to have one application and therefore one survey for the whole or their external or 'ring' boundary;

b) Rewi Maniapoto, Hitiri Paerata, Taonui, Wahanui and Hopa Te Rangianini signed the foot of the form;

c) Thirty other chiefs signed the body of the application form. This was intended to make clear that the chiefs wanted to be sure (within the confines of the printed form) that it would be clearly understood as a pan-tribal application by the 'four tribes' as described in their petition, and not a 'Ngāti Maniapoto' application alone as Minister Bryce had several times tried to insist;

d) At a meeting to discuss the application there was a pan-tribal attendance.[22]

24.7 A meeting and formal exchange of letters between the Chief Surveyor (and Assistant Surveyor General) and Ngāti Maniapoto rangatira on 19th December 1883:[23]

[21] Marr, #A78, p 939
[22] Marr, #A78, p 399

a) A letter from the chiefs consenting to the government making an accurate survey of the boundary of "our block" for £1,600. The letter also stated that the agreement must not be altered by any other arrangement or future government;[24]

b) A letter from Smith in reply consenting to making an accurate survey of the "lines of the external boundary of your block" for £1,600. It agreed that "neither the Government nor any other Government" would make any other arrangements in the future;[25]

c) At the meeting held to discuss the application there was a pan-tribal attendance;[26]

d) The agreements confirmed there would be one survey of the whole external boundary to be followed by one Court hearing to confirm it;[27] and

e) The agreement would bind future governments.[28]

24.8 Wahanui, on behalf of Ngāti Maniapoto, spoke to the House of Representatives on 1 November 1884.[29] He explained:

a) His people wanted sole administration of their lands, that is authority over their lands to be vested in their committees;[30]

b) They did not want the Native Land Court brought in over them. Instead they wanted legislation to help them administer their lands;[31]

c) He wanted amendments to the Native Land Settlement Bill being considered;[32] and

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[23] Marr, #A78, pp 982 - 983
[24] Marr, #A78, p 982
[25] Marr, #A78, p 983
[26] Marr, #A78, p 981
[27] Marr, #A78, p 984
[28] Marr, #A78, p 983
[29] Marr, #A78, p 1077
[30] Marr, #A78, p 1078
[31] Marr, #A78, p 1077

d) For the 'great evil' of the sale of liquor to be barred from the district.[33]

24.9 Wahanui, on behalf of Ngāti Maniapoto, again spoke to the Legislative Council on 6 November 1884. He explained:[34]

a) That his principal object was to have full control and power over his own lands (by which he meant chiefly power over the Rohe Pōtae) subject to the authority of the Governor;

b) He wanted his Native Committee empowered so that 'all dealings and transactions' within the proclaimed district should be left in the hands of the Committee; and

c) For laws that were carefully framed for the protection of both races and for Māori to be treated the same as Europeans so they could live amicably together in the future.

Promises by the Crown

25. As a result of the above and in return for the iwi leaders allowing the railway route survey, the claimants assert that the Crown promised:

25.1 To ease pressures on the Te Rohe Pōtae boundary by delaying surveys while details as to the survey were confirmed.[35]

25.2 To support the petition which Wahanui indicated in his letter dated 16 March 1883 was intended to be sent to Parliament,[36] the objectives of which included:

a) That the Land Court should not operate in the boundaries set out ("the Rohe Pōtae");[37]

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[32] Marr, #A78, p 1078
[33] Marr, #A78, p 1078
[34] Marr, #A78, p 1093 - 1094
[35] Marr, #A78, p 934
[36] Marr, #A78, p 1122
[37] Marr, #A78, p 871

b) Parliament to pass a law securing lands to the petitioners and their descendants forever making them absolutely inalienable by sale;[38]

c) That the petitioners be allowed to fix the boundaries of their iwi and hapū, and the proportionate claim of each individual within the Rohe Pōtae.[39]

25.3 The petitioners to have full control and power over their lands:

a) By letter dated 20 May 1884 Rangituatea and others wrote to the Native Minister, the Honourable John Bryce stating they wanted to have control of their lands;[40] and

b) In a speech during a hui at Kihikihi on 4 February 1885, attended by the then current Native Minister, the Honourable John Ballance, Wahanui discussed the request that Europeans should refrain from interfering with Māori lands, but leave Māori to manage them themselves.[41]

25.4 That a Native Committee system controlled by the petitioners, would be responsible for land administration:[42]

a) The Government followed up the 1883 petition with some legislation intended to meet the requests of the four tribes; the Native Committees Act 1883 was passed on 8 September 1883.[43]

b) In 1884, when speaking to the Legislative Council, Wahanui outlined the powers he wanted for Native Committees:

[38] Marr, #A78, p 871
[39] Marr, #A78, p 871
[40] Marr, #A78, p 1001
[41] Marr, #A78, pp 1068 - 1069
[42] Marr, #A78, p 1124
[43] Marr, #A78, p 890

"[T]he Native Committee – should be empowered, so that all dealings and transactions within that proclaimed district should be left in the hands of that Committee".[44]

c) In a speech during a hui at Kihikihi on 4 February 1885, attended by the then current Native Minister, the Honourable John Ballance, Wahanui outlined the "compact" including:

"[G]iving power to the Māori Committees to conduct matters for the Māori people."[45]

25.5 That there would be no prospecting for gold without the prior permission of rangatira:[46]

a) In a speech during a hui at Kihikihi on 4 February 1885, attended by the then current Native Minister, the Honourable John Ballance, spokesperson Ormsby outlined the "compact" including:

"That the gold should not be worked by Europeans without our authority." [47]

No liquor sales

25.6 That there would be no liquor to be sold in the Rohe Pōtae:[48]

a) A prohibition proclamation was gazetted on 11 December 1884, declaring that no license shall be granted for the sale of intoxicating liquors within the 'Kawhia Licensing Area', which included most of the Rohe Potae inquiry district.[49]

b) In a speech during a hui at Kihikihi on 4 February 1885, attended by the then current Native Minister, the

[44] Marr, #A78, p 955
[45] Marr, #A78, p 1124
[46] Marr, #A78, p 1124
[47] Marr, #A78, p 1124
[48] Marr, #A78, p 1127
[49] Robinson and Christoffel, # A71, *Aspects of Rohe Potae Political Engagement, 1886-1913*, pp 18 - 19

Honourable John Ballance, Wahanui outlined the "compact" including:

"That no liquor licenses should be granted within certain boundaries."[50]

25.7 To complete an accurate survey of the external boundary of the Rohe Pōtae, including:

a) That the Government make an accurate survey of the external boundary of the Rohe Pōtae at a cost of £1,600, in order to obtain a Crown Grant for it.[51]

b) By letter dated 19 December 1883 from S Percy Smith to Wahanui, Taonui and Rewi Maniapoto it was consented that "the government surveyors should make an accurate survey of the lines of the external boundary of your block, in order that a Crown grant may issue to you and your tribe; it is also agreed that the survey shall not exceed £1,600."[52]

25.8 That the survey agreement not be altered by any other arrangement or by any future Government;[53]

a) By letter dated 19 December 1883 from S Percy Smith to Wahanui, Taonui and Rewi Maniapoto the following was stated: "And it is agreed to as a definite word that neither the Government nor any other Government can make any other arrangement in the future."[54]

SPECIFIC CAUSES OF ACTION

26. The principles of and guarantees protected by Te Tiriti, together with the specific agreements, promises and Crown acknowledgements that formed part of Te Ōhākī Tapu underpin all breaches of Te Tiriti and the significant prejudices suffered by Ngāti KInohaku and as pleaded below.

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[50] Marr, #A78, p 1293
[51] Marr, #A78, p 979
[52] Marr, #A78, p 983
[53] Marr, #A78, p 982
[54] Marr, #A78, p 983

E. FIRST CAUSE OF ACTION: FAILURE OF THE CROWN TO PROTECT TE TINO RANGATIRATANGA OF NGĀTI KINOHAKU

DUTIES

27. At all times the Crown had duties to:

27.1 Uphold the tino rangatiratanga of Māori;

27.2 Act reasonably and with the utmost good faith towards Ngāti Kinohaku ;

27.3 Adopt a fair process in any dealings with Ngāti Kinohaku and their lands;

27.4 Actively protect Ngāti Kinohaku and their lands to the fullest extent practicable; and

27.5 Recognise and uphold Ngāti Kinohaku customs and practices

BREACH

28. In breach of its duties, the Crown failed to protect the tino rangatiratanga of Ngāti Maniapoto, including Ngāti Kinohaku, by failing to honour the promises made as part of Te Ōhākī Tapu. In particular, the Crown failed to honour its promises that it would:

28.1 Support the petition and its objectives, in particular failing to honour the following promises:

a) That the Native Land Court should not operate in the Rohe Pōtae;

(i) In an effort to encourage extensive land purchasing, the government encouraged very large 'tribal' applications to the Native Land Court, in contravention of the promises made as part of Te Ōhākī Tapu;[55]

(ii) In 1885 several applications to the Native Land Court were made to large areas of land which cut

[55] Marr, #A78, p 1006

extensively into the Rohe Pōtae external boundary;[56]

(iii) Iwi leaders were effectively forced to participate in the Native Land Court process because they had no other option once it was clear the government would not uphold their external boundary;[57]

(iv) Reluctantly, on 28 April 1886, an application described as being for the lands of Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, Whanganui and Hikairo within their external boundary ('poraka') was made to the Native Land Court;[58]

(v) The Rohe Pōtae case first came before the Native Land Court at a sitting at Otorohanga on 29 July 1886;[59]

b) The Native Land Court process was responsible for:

(i) The subsequent alienation of a majority of the claimants' land as set out in the Native Land Court Cause of Action;

(ii) Significant and unreasonable costs through survey requirements, which led, in some cases, to land being sold to pay these survey costs;[60] and

(iii) Shifted control over decisions of alienation away from a communal approach to an individual approach thus undermining Māori ownership of land and collective decision-making.[61]

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[56] Marr, #A78, p 1006-1007
[57] Marr, #A78, p 1007
[58] Marr, #A78, p 1268
[59] Berghan, #A60, Block Research Narratives, p 68
[60] Also refer to Fourth Cause of Action: Survey Issues
[61] Husbands and Mitchell, #A79 , p 2

28.2 Parliament to pass a law securing lands to the petitioners and their descendants forever making them absolutely inalienable by sale:[62]

a) The Crown did not pass a law securing lands to the petitioners making them inalienable and instead:

(i) Introduced the Native Land Court into Te Rohe Pōtae which facilitated the alienation of a majority of the claimants' land;[63]

(ii) Implemented a land purchase policy to acquire as much Māori land as possible in the North Island,[64] the net result of which was that over the period 1889 to 1909 the Crown was the largest purchaser of Māori land in Te Rohe Pōtae, government alienations accounting for a total of 804,504 acres or 97 percent of the total identified area of alienation;[65] and

(iii) The Crown introduced Public Works legislation that allowed the Crown to compulsorily acquire Māori land and did so with respect to the claimants land.[66]

28.3 That the petitioners be allowed to fix the boundaries of their iwi and hapu, and the proportionate claim of each individual within Te Rohe Potae:[67]

a) The Crown did not allow the petitioners to fix the boundaries of their iwi and hapū themselves and did not allow iwi and hapū to determine interests and instead introduced the Native Land Court process which:

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[62] Marr, #A78, p 1294
[63] Also refer to Third Cause of Action: Native Land Court
[64] Also refer to Fifth Cause of Action: Crown Purchasing
[65] Innes, Mitchell and Douglas, #A21, *Alienation of Maori Land wihtin TRP 1840 - 2010 - A Quantitive Study,* p 44
[66] Also refer to Sixth Cause of Action: Compulsory Acquisitions
[67] Marr, #A78, p 1295

(i) Was set up to hear and determine individual ownership and claims to Māori land, with decisions of the Court binding;[68]

(ii) Although Māori were not compelled to put their lands before the Court, the Crown actively encouraged this and the process compelled Māori to participate given that any individual could commence the process by lodging an application;[69]

(iii) Shifted control over decisions of alienation away from a communal approach to an individual approach thus undermining the rangatiratanga of Māori.[70]

28.4 The petitioners to have full control and power over their lands;

a) The Crown failed to give the petitioners full control and power over their lands and instead:

(i) Introduced the Native Land Court into Te Rohe Pōtae which determined ownership and claims to Māori land and resulted in Crown grants being issued; [71]

(ii) Over the period 1889 to 1909 the Crown acquired a total of 804,504 acres or 97 percent of the total identified area of alienation;[72]

(iii) Compulsorily acquired lands as set out in the Compulsory Acquisitions Cause of Action.

(iv) Imposed significant and unreasonable costs upon Māori through survey requirements, which led, in some cases, to land being sold to pay these

[68] Also refer to Third Cause of Action: Native Land Court
[69] Husbands and Mitchell #A79, p 55
[70] Husbands and Mitchell, #A79, p 2
[71] Also refer to Third Cause of Action: Native Land Court
[72] Innes, Mitchell and Douglas, #A21, p 44

survey costs, as set out in the Loss of Land Due to Surveys Cause of Action.

28.5 That a Native Committee system controlled by iwi, would responsible for land administration:[73]

a) The Government implemented the Native Committees Act 1883 which was concerned with better recognising Maori management of their affairs;[74]

(i) The Native Committees lacked real power, resourcing and support being described by the 1891 Native Land Laws Commission, as a 'hollow shell' that 'mocked and still mocks the Natives with a semblance of authority';[75] and

(ii) Implemented local government which failed to ensure that Te Rohe Pōtae Māori were adequately represented in local government.[76]

28.6 No liquor to be sold in the Rohe Pōtae:

a) A proclamation prohibiting liquor licences in the Kawhia Licensing district was gazetted in December 1884;[77]

b) Despite this, in 1897, 47 people were convicted of selling illegal alcohol in the King Country, of whom 11 were imprisoned;[78]

c) Due to the prevalence of 'sly-grogging', many argued it would make more sense to allow the sale of alcohol under proper control;[79] and

d) By the mid 1950s Māori were able to consume alcohol on the same basis as other New Zealanders.[80]

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[73] Marr, #A78, p 1292
[74] Marr, #A78, p 890
[75] Marr, #A78, p 293
[76] Also refer to Eighth Cause of Action: Local Government
[77] Marr, #A78, p 1106
[78] H Robinson, #A31, *Maori Health and the Crown in Te Rohe Potae 1840 – 1990*, p 36
[79] H Robinson, #A31, p 37

28.7 To complete an accurate survey of the external boundary of the Rohe Pōtae.

a) The government treated the survey agreement as no more than routine transactions of the Land Court process further insisting that the Court application concerned a Ngāti Maniapoto 'tribal' boundary only.[81]

PREJUDICE

29. The claimants say that they have been prejudicially affected by the Crowns failure to honour its promises as alleged in the above cause of action as follows:

29.1 The loss of individual and collective mana and rangatiratanga;

29.2 Dispossessed of their land which they had strong spiritual ties to;

29.3 Destroyed the political and autonomy structures of Ngāti Kinohaku;

29.4 Prevented from exercising their tino rangatiratanga as guaranteed by Article Two of Te Tiriti; and

29.5 The diminution of the Ngāti Kinohaku traditional land base;

29.6 Uphold the tino rangatiratanga and the autonomy of Māori.

F. SECOND CAUSE OF ACTION: THE CROWN'S FAILURE TO PROTECT THE LAND BASE AND OTHER RESOURCES OF NGĀTI KINOHAKU

DUTIES

30. At all times, the Crown had duties to:

30.1 Respect the claimants tino rangatiratanga in relation to the ownership and management of their lands;

30.2 Actively protect the claimants lands to the fullest extent practicable;

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[80] H Robinson, #A31, p 232
[81] Marr, #A78, p 1291

30.3 Act reasonably and with the utmost good faith towards;

30.4 Adopt a fair process in any dealings with the claimants and their lands;

30.5 Recognise and uphold Ngāti Kinohaku customs and practices;

30.6 Ensure the claimants were left with a sufficient land base for their present and future needs; and

30.7 Ensure that the claimants were accorded the rights and privileges of British subjects.

BREACH

31. In breach of its duties and in breach of the promises made as part of Te Ohāki Tapu, the Crown:

31.1 Adopted and/or facilitated and/or allowed a series of mechanisms and processes which led to the alienation of a vast majority of the Ngāti Kinohaku land base and resources, they being:

a) The Native Land Court;[82]

b) Surveys[83]

c) Crown Purchasing;[84]

d) Compulsory Acquisitions[85]

e) Land consolidation and development schemes[86]

f) Local Government;[87]

31.2 Failed to ensure that Ngāti Kinohaku were left with a sufficient endowment of lands for their present and future needs resulting in Ngāti Kinohaku being rendered virtually landless today.

[82] Also refer to Third Cause of Action: Native Land Court
[83] Also refer to Fourth Cause of Action: Survey Issues
[84] Also refer to Fifth Cause of Action: Crown Purchasing
[85] Also refer to Sixth Cause of Action: Compulsory Acquisitions
[86] Also refer to Seventh Cause of Action: Land Consolidation and Development
[87] Also refer to Eighth Cause of Action: Local Government

a) As at 1889, Ngāti Kinohaku had significant interests in the Inquiry District which contained 1,799,885 acres of land in Maori ownership.[88]

b) By 1908, approximately 47% of the Inquiry District had been alienated and mostly to the Crown, including large purchases of Ngāti Kinohaku lands:[89]

(i) Some of the largest Crown purchases were made in the form of 31281 acres out of Kinohaku West K, 20 059 acres and 21110 acres from Kinohaku West H3.[90]

c) Over the period from 1889 to 1909, the Crown was the largest purchaser of Māori land with government alienations accounting for a total of 804,504 acres or 97 percent of the total identified area of alienation;[91]

d) By the end of 1910, 960,374 acres remained in Māori ownership, or just under 50 percent of the district;[92] and

e) In 2010, 233,204 acres remained in Maori ownership.[93]

31.3 The Crown has assumed ownership and control of important Ngāti Kinohaku resources namely the foreshore and seabed between Waikawau and Marakopa.[94]

31.4 Other important Ngāti Kinohaku resources and kainga, urupa, waahi tapu and sites of significance were destroyed or adversely affected by Crown actions and/or omissions.[95]

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[88] Innes, Mitchell and Douglas, #A21, p 44
[89] Husbands and Mitchell, #A79, p 246
[90] Innes, Mitchell and Douglas, #A21, p 44
[91] Innes, Mitchell and Douglas, #A21, p 44
[92] Innes, Mitchell and Douglas, #A21, p 44
[93] Based upon a quantification of current Māori land blocks and as cited in Innes, Mitchell and Douglas, #A21, p 50
[94] Also refer Ninth Cause of Action: Foreshore and Seabed
[95] Claimant own evidence

PREJUDICE

32. As a result of the Crown's acts and omissions, Ngāti Kinohaku claim that they are and have been prejudicially affected in that the claimants:

32.1 No longer hold significant lands and resources in accordance with their lore and customs;

32.2 Have been left with an insufficient endowment of lands and resources for their present and future needs;

32.3 Have been and continue to be prevented from freely exercising their tino rangātiratanga, including possession, management and control of all their property, resources and social structures, in accordance with their lore, cultural preferences and customs;

32.4 Have been and continue to be prevented or hampered in the proper economic utilisation and development of their land and resources;

32.5 Have suffered and continue to suffer a consequent loss of mana; and

32.6 Were required to live in substandard conditions during the hearing processes, leading to sicknesses and death.

G. THIRD CAUSE OF ACTION: THE NATIVE LAND COURT

DUTIES

33. At all times the Crown had duties to:

33.1 Recognise and respect Ngāti Kinohaku customs including their land tenure systems;

33.2 Regulate the alienation of Ngāti Kinohaku lands reasonably and with the utmost good faith; and

33.3 Actively protect Ngāti Kinohaku in the use of their lands and resources to the fullest extent practicable.

BREACH

34. In breach of the principles of Te Tiriti, and in breach of the promises made as part of Te Ōhākī Tapu, the Crown introduced tenure reform by way of the Native Land Court ("the Court") and associated legislation.

34.1 As part of Te Ōhākī Tapu, the Crown promised that the Court would not operate in Te Rohe Potae;[96]

a) The Court began operating in the late 1860's;[97]

b) The first Rohe Pōtae case sat at Otorohanga on 29 July 1886;[98] and

c) The Rohe Potae Block lists included entries for 16 groups including Ngāti Kinohaku.[99]

34.2 The Court created a new tenure system without consultation with Ngāti Kinohaku

a) The new tenure system defined ownership by lists of every individual and not in terms of existing tribal or hapū structures.[100]

b) This form of individualised title threatened to undermine the authority of tribal leaders while exposing the land to uncontrolled alienation.[101]

34.3 By March 1894, Ngāti Kinohaku leaders bemoaned impacts of the Court on their traditionally held lands: [102]

a) Ngāti Kinohaku leaders including Hotutaua Pakukohatu, Whitinui Hohepa and Tamihana Te Huirau pleaded that the Crown protect their traditionally held blocks, in this case, the Ototoika block.

[96] Also refer First Cause of Action: Failure of the Crown to Protect Te Tino Rangatiratanga
[97] Boulton, #A67, p 37
[98] Berghan, #A60, p 68
[99] Husbands and Mitchell, #A79, p 151
[100] Husbands and Mitchell, #A79, p 156
[101] Husbands and Mitchell, #A79, p 156
[102] Husbands and Mitchell, #A79, p 270

b) The Crown responded that Ngāti Kinohaku's pleas were based on 'mere sentiment' and that individual rights should prevail.

c) By May 1894, the Crown had secured a subdivision of 153 acres out of the Ototoika block.

34.4 Between 13th June 1895 and 5 December 1906, notices of appeal were filed against decisions made by the Court with regard to the Kinohaku East 2, Te Karu o te Whenua and Taumatatotara blocks.[103]

34.5 Other complaints were made in the form of petitions to the Government and concerning specific blocks.[104] Ngāti Kinohaku petitioners included:[105]

a) Hotutaua Pakukohata and 47 others asked for a rehearing in regard to Kinohaku East 2. The petition was referred by the Native Affairs Select Committee to the Government 'for consideration'[106]

b) Te Ata Erana asked for a rehearing in respect of Kinohaku East 1. The petition was referred by the Native Affairs Select Committee to the Government for 'consideration';[107] and

c) Hohipera Tuwarerenga and 20 others asked for a rehearing in respect of Kinohaku East and other blocks. The Native Affairs Committee reported that the petition had 'no recommendations to make with regard to this petition.'[108]

35. In breach of its duties to regulate the alienation of Ngāti Kinohaku lands reasonably and with the utmost good faith, the Crown encouraged the Court and its processes:

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[103] Husbands and Mitchell, #A79, p 430
[104] Husbands and Mitchell, #A79, p 464 - 473
[105] Husbands and Mitchell, #A79, pp 466 - 467. The evidence does not show any record of official responses to any of the petitions cited
[106] Husbands and Mitchell, #A79, p 466
[107] Husbands and Mitchell, #A79, p 466 - 467
[108] Husbands and Mitchell, #A79, p 473

35.1 During the period from 1886 to 1910 the Native Land Court investigated the following blocks within which Ngāti Kinohaku had interests:

a) Kinohaku East;[109]

b) Kinohaku West;[110]

c) Taharoa B;[111]

d) Harihari;[112]

e) Awakino;[113]

f) Te Karu o te Whenua;[114]

g) Tapuiwahine;[115]

h) Taumatatotara;[116]

i) Marakopa;[117]

j) Marakopa Reserve;[118]

k) Te Kumi;[119]

l) Ototoika;[120]

m) Pokuru;[121]

n) Piha[122]

35.2 From 1889 to 1910, iwi and hapu of the Inquiry District, including Ngāti Kinohaku, had more than 550 000 acres of what was once

[109] Berghan, #A60, pp 300 - 306, 307 - 342
[110] Berghan, #A60, p 300 - 306, 343 - 375
[111] Berghan, #A60, p 1052 - 1067
[112] Berghan, #A60, pp 39 - 44
[113] Berghan, #A60, pp 125 - 127
[114] Berghan, #A60, pp 226 - 238
[115] Berghan, #A60, pp 1087 - 1090
[116] Berghan, #A60, pp 1095 - 1105
[117] Berghan, #A60, pp 525 - 529
[118] Berghan, #A60, pp 530
[119] Berghan, #A60, pp 402 - 412
[120] Berghan, #A60, pp 682 - 687
[121] Berghan, #A60, pp 766 - 772
[122] Berghan, #A60, p 723

community, or hapu and iwi-owned land alienated from their ownership.[123] In doing so, the Court:

a) Converted 3139 individual, previously Māori owned shares into 186,931 acres of Crown land.

b) The most significant Crown awards were 30,762 acres out of Kinohaku West K, 20,059 acres from Kinohaku West H, and 13,673 acres of Kinohaku West G.[124]

35.3 Encouraged the extinction of Māori customs, social order, authority and leadership, for example:

35.4 Pitted whānau, hapū and iwi against one another as 'claimants' and 'counter claimants' in an adversarial forum:[125]

a) The Pukeroa Hangatiki block was initially claimed by Ngāti Kinohaku, but contested by five groups of counter claimants acting on the behalf of Ngāti Te Kawa, Ngāti Ruapuha and Ngāti Te Kanawa, Ngāti Wharekokowai, Ngāti Rangi and Ngāti Rora respectively.

b) Having received evidence which it deemed 'very conflicting' regarding 'ancestors, bases of title, boundaries, ancient marks, pas, settlements, burial places, eel weirs and other signs' the Judge held the case over for in excess of 35 days so and ultimately determined ownership in accordance with the Native Land Act rather than the evidence presented by claimants.

35.5 Re-interpreted Ngāti Kinohaku customs, including the role of women:[126]

[123] Husbands and Mitchell, #A79, p 261
[124] Husbands and Mitchell, #A79, p 257
[125] Husbands and Mitchell, #A79, p 166
[126] Mere Te Rongopamamao & Hariata Raurau cited in Husbands and Mitchell, #A79, p 410

a) In May 1895, Ngāti Kinohaku elders had met in Oparure to define the interests to Kinohaku East 2 (Pakeho) block. Agreement was reached and submitted to the Court.

b) Contested evidence was heard and further accentuated by the manner in which the case was framed for the Court by the kaiwhakahaere in the case who played to the gender preconceptions of the European Judges, presenting his clients as weak and defenceless women who had been 'brow-beaten and over-ridden by the men.'[127]

35.6 Forced Māori to attend Court hearings. Failure to attend Court hearings was to risk exclusion from receiving due recognition (and award) of ownership interests:[128]

a) In August 1897, Paretuiroro protested against the non-inclusion of his children in the list for Kinohaku East 1 (Ototoika). His non-attendance at Court was due to sickness and he had not seen the lists before they were submitted.[129]

35.7 Burdened Māori with Court costs, as well as food and accommodation costs.[130]

a) Court fees quickly accumulated and proved costly to Ngāti Kinohaku landowners:[131]

b) Hearings before the Native Appellate Court also incurred extra fees such as the Taumatatotara and Te Karu o te Whenua investigation of title hearings.[132]

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[127] Husbands and Mitchell, #A79, p 410
[128] Husbands and Mitchell, #A79, p 531
[129] Husbands and Mitchell, #A79, p 531
[130] Husbands and Mitchell, #A79, p 289
[131] For example, the administration of the estate of Marata Rangiatepure (who owned 16 shares in the Kinohaku East and West block) required 16 separate succession orders to transfer 16 shares, resulting in £4 2s of court fees in total and cited in Husbands and Mitchell, #A79, p 527 Husbands and Mitchell, #A79, p 292
[132] Husbands and Mitchell, #A79, pp 463 - 464

c) In addition to financial costs, attrition and the time taken to participate in Court hearings affected Ngāti Kinohaku claimants.

d) In respect of the subdivision of the land ' in the vicinity of Otorohanga' and adjacent to the new railway line, the hearing ran for 42 days and ownership was contested with counter-claimants from Ngāti Kinohaku along with Ngāti Rangatahi, Ngāti Urunumia, Ngāti Hinekino, Ngāti Peehi, Ngāti Runga and Ngāti Parewaeono all presenting evidence.[133] As with other contested hearings, the Judge determined ownership in accordance with the Native Land Laws rather than on evidence presented by the participants.

PREJUDICE

36. As a result of the Crown's acts and omissions, Ngāti Kinohaku claim that they are and have been prejudicially affected in that the claimants:

36.1 No longer hold significant lands and resources in accordance with their lore and customs;

36.2 Have been left with an insufficient endowment of lands and resources for their present and future needs;

36.3 Have been and continue to be prevented from freely exercising their tino rangātiratanga, including possession, management and control of all their property, resources and social structures, in accordance with their lore, cultural preferences and customs;

36.4 Have been and continue to be prevented or hampered in the proper economic utilisation and development of their land and resources;

36.5 Have suffered and continue to suffer a consequent loss of mana; and

[133] Husbands and Mitchell, #A79, p 164

36.6 Were required to live in substandard conditions during the hearing processes, leading to sicknesses and death.

H. FOURTH CAUSE OF ACTION: SURVEY ISSUES

DUTIES

37. At all times the Crown had duties to:

37.1 Actively protect Māori land and resources to the fullest extent practicable;

37.2 To act reasonably and with the utmost good faith in all dealings with Māori; and

37.3 To adopt a fair process in any dealings with Māori and their lands.

BREACH

38. In breach of its duties under Te Tiriti, and in breach of the promises made as part of Te Ōhākī Tapu, the Crown put in place legislation which imposed upon Māori significant and unreasonable costs through survey requirements, which led, in some cases, to land being sold to pay these survey costs:

38.1 Surveyors could take out charging orders over Māori land:[134]

a) From 1886, legislation permitted surveyors to take out a charging order for the work completed;

(i) In Kinohaku East (53,718 acres) the sum levied was £393 13s 11d. Kinohaku West (162,000 acres) incurred £1,283.903 of survey costs[135]

(ii) Even taking into account the vast areas surveyed in respect of the Kinohaku West block, survey costs were high relative to the block's total value.[136]

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[134] Boulton, #A67, *Land Alienation in the Rohe Potae District Inquiry 1866 – 1908, An Overview,* p 428

[135] Husbands and Mitchell, #A79, p 244

[136] Husbands and Mitchell, #A79, p 303

38.2 Charging orders were registered against land titles as survey liens. Survey liens also attracted interest of up to a maximum of 5% per annum for 5 years.[137]

a) In parts of Kinohaku East interest accounted for a substantial portion of the total survey charge.[138]

38.3 Māori owners could then request that the Crown pay these costs;

a) If the Māori owners were unable to repay the Crown the debt could be passed onto the owners via a mortgage registered on the title; and

b) The mortgage incurred a five per cent interest rate.

38.4 Charging orders could be made in favour of the Surveyor General:[139]

a) After 1888 charging orders could also be made in favour of the Surveyor General as well as surveyors; and

b) Resulting mortgages had to be repaid within 12 months.

38.5 The Crown took other Ngāti Kinohaku lands in satisfaction of survey liens: [140]

a) On 6th February 1893, Te Moerua Natanahira and 33 other members of Ngāti Kinohaku wrote to the Native Minister informing him that they had 'no money' to pay survey costs. Te Moerua cited the 'great trouble' they were in 'through want of money to pay for our survey during the past four years'.[141]

b) Without any alternative, Te Moerua offered land in lieu of cash payment.

[137] Husbands and Mitchell, #A79, p 301
[138] Husbands and Mitchell, #A79, p 306
[139] Boulton, #A67, p 428
[140] Husbands and Mitchell, #A79, Figure 5.5, p 352
[141] Husbands and Mitchell, #A79, p 246

c) Parts of the block were subsequently cut out from Kinohaku East and taken by the Crown as payment of survey costs.

38.6 Between 1892 and 1907 more than 91,000 acres of Maori land within Te Rohe Potae was alienated to the Crown as payment for survey charges, including:[142]

a) 6,222.03 acres from Kinohaku West;

b) 597.73 acres from Kinohaku East;

c) 56.33 acres from Karu o te Whenua;

d) 41 acres from Te Kumi;

e) 162 acres from Hurakia; and

f) 126 acres from Ketemaringi.

38.7 As a result of the laws instituting a Crown statutory monopoly over land leasing and purchasing, Māori were unable to sell land on the open market to pay for survey costs. Instead they were obliged to alienate to the Crown at prices set by the Crown.[143]

PREJUDICE

39. The claimants say that they have been prejudicially affected by the Crowns breaches of its duties as alleged in the above cause of action as follows:

39.1 The Crown put in place legislation which imposed upon Māori significant and unreasonable costs through survey requirements;

39.2 Māori land, including those belonging to Ngāti Kinohaku landowners, were sold to pay survey costs; and

39.3 As a result of the laws instituting a Crown statutory monopoly over land leasing and purchasing, Māori, including Ngāti Kinohaku

[142] Boulton, #A67, p 431. The researcher noted that these figures are likely to be conservative and other blocks were affected by survey liens
[143] Husbands and Mitchell, #A79, p 518

landowners, were not able to sell land on the open market to pay for survey costs, instead they were obliged to alienate to the Crown at prices set by the Crown.

I. FIFTH CAUSE OF ACTION: CROWN PURCHASING 1884-1910

DUTIES

40. At all times the Crown had duties to:

40.1 Actively protect Ngāti Kinohaku lands and resources to the fullest extent practicable;

40.2 Act reasonably and with the utmost good faith in all dealings with Ngāti Kinohaku;

40.3 Adopt a fair process in any dealings with Ngāti Kinohaku and their lands;

40.4 Act with the utmost good faith towards Ngāti Kinohaku; and

40.5 Act in accordance with the principles of partnership under Te Tiriti.

BREACH

41. In breach of its duties and in breach of the promises made as part of Te Ōhākī Tapu, the Crown employed tactics that were in breach of Te Tiriti in order to facilitate the acquisition of Māori land and resources and acquired excessive amounts of Ngati Kinohaku lands. In particular, the Crown:

41.1 Purchased land despite assuring Māori they would have full control and power over their lands

a) As part of Te Ōhākī Tapu, the Crown promised Māori would have full control and power over their lands within Te Rohe Pōtae;[144] and

b) Despite this, in 1889, the Crown officially recommenced purchasing Māori land in the district.[145]

[144] Also refer to Background to the Causes of Action

41.2 In respect of its land purchasing regime, the Crown's objectives were two fold:

a) To purchase as much Māori land as possible and at the lowest price;[146] and

b) To keep the best lands for itself and on-sell the balance to other parties, such pakeha settlers, and always at a profit.[147]

41.3 Was well prepared, having had purchasing agents in the Inquiry District in advance of its first purchases. This gave the Crown a thorough and detailed understanding of the best lands and resources.[148]

a) From 1889 to 1894 the Government increased the amount of money available for land purchasing. These increases were critical to the continued momentum of the Crown's land purchasing regime.[149]

b) Crown purchasing increased from 352,581 acres between 1883 and 1894 to 516,055 acres between 1895 and 1896.[150]

c) Similarly efficient was Crown Agent's organisation of the apportionment of the interests he had acquired in 11 Kinohaku West and three Kinohaku East blocks in March 1898. Wilkinson boasted that he controlled every aspect of the process.[151]

(i) Having visited Ngāti Kinohaku landowners (at Oparure) the Native Land Agent bought all of his

[145] Boulton, #A67, p 490
[146] Boulton, #A67, p 112
[147] Boulton, #A67, p 112
[148] Boulton, #A67, p 126
[149] Boulton, #A67, p 120
[150] Boulton, #A67, p 130
[151] Husbands and Mitchell, #A79, p 253

purchases in Kinohaku West through the Court in one day.[152]

41.4 Facilitated the further fragmentation of Māori land.

a) The purchasing of individual interests required the Crown to partition out its interests and this acclerated land fragmentation. As a result, larger blocks that might have been suitable for large-scale farming were rapidly broken up by areas of Crown land. This became problematic as the number of owners multiplied over time through succession and it become more difficult for the land to support all owners.

b) In Kinohaku East 2 (Pakeho), the definition and cutting out of the interests acquired by the Crown in November 1897 was accompanied by the wholesale partition of the remaining block into 28 separate sections.[153]

c) Land that had already been divided once by the Court was often subjected to one or more further rounds of partition as the Government continued its campaign of land acquisition, targeting the 'residue' blocks that belonged to those who had – initially at least – resisted the Land Purchase Officer's appeals to sell.

d) In January and February 1901 Crown Agent's brought more shares in Kinohaku East 2 (and despite a direction to halt new land purchases).[154]

41.5 In breach of its duty to adopt a fair process in any dealings with Ngāti Kinohaku and their lands, the Crown adopted unfair purchasing practices in order to acquire lands:

[152] Husbands and Mitchell, #A79, p 254
[153] Husbands and Mitchell, #A79, p 262
[154] Husbands and Mitchell, #A79, pp 261 - 262

Individual interests

a) The Crown focused on purchasing individual interests in order to aggregate an overall interest in favour of the Crown.[155]

b) The Crown persisted with purchasing individual interests such as in the Kinohaku East 1 Ototoika block and even with notice of opposition in the form of a letter from 'leading members of the tribe'.[156]

Willing sellers

c) The Crown developed a policy of negotiating privately with individual 'willing sellers'.[157]

d) Wahanui accused Land Purchase Officers Grace and Butler as well as Wilkinson of actively canvassing owners, 'making enquiries' as to whether any were 'willing to sell.' Wahanui regarded the crown agents' actions as a direct breach of faith by Native Minister Balance.[158]

Pre-title determination purchasing

e) The Crown decided to proceed with purchasing in blocks where the relative share of each owner had not been defined and treated all owners as holding equal shares in the block.[159]

f) This was despite Crown officials' awareness that equal shares did not represent the reality of land ownership in the district.[160]

(i) In Hauturu East B2 the Crown had its share awarded by the Court after having acquired

[155] Husbands and Mitchell, #A79, p 247
[156] Husbands and Mitchell, #A79, p 250
[157] Boulton, #A70, *Hapu and Iwi land transactions with the Crown and Europeans in Te Rohe Potae c1840 – 1865*, pp 249, 374
[158] Husbands and Mitchell, #A79, p 164
[159] Boulton, #A67, p 236
[160] Boulton, #A67, p 236

slightly more than 139 of the 322 ¼ available shares.[161]

(ii) In Kinohaku East Nos 1, 3 and 4 (Ototoika, Arapae and Mairoa) the Land Purchase Officer had succeeded in purchasing less than one quarter of the block's shares before having the Crown's interest cut out.

(iii) In Ototoika (where Ngāti Kinohaku had previously expressed opposition to the sale of their land by letter to the Native Minister) the number of shares acquired by the Crown.[162]

g) The Crown continued acting in accordance with this policy despite opposition from Rohe Potae Māori.[163]

Hardship

h) The Crown was not immune to purchasing interests from those who undergoing hard times or urgently needed money.

(i) Maringi Whitinui of Ngāti Kinohaku sold her interests in Kinohaku East 2 block to support a need to visit sick family in Auckland.[164]

Non-sellers

i) The Crown deliberately targeted non-selling owners and often in the form of meetings outside of the Native Land Court. The Crown was always in full control of the process and therefore could see that the purchases passed through the Native Land Court with ease.[165]

(i) In the 'non-selling' owned block of Kinohaku East 2 Sec 25B2, the owners who had managed to

[161] Boulton, #A67, p 236
[162] Husbands and Mitchell, #A79, p 258
[163] Boulton, #A67, p 240
[164] Husbands and Mitchell, #A79, p 249
[165] Husbands and Mitchell, #A79, p 254

resist Crown purchasing efforts eventually gave in.

(ii) On 14th April 1908, the Crown's agent presented the Native Land Court with information reflecting the Crown's purchase of 41 ½ of the section's 59 shares. As a consequence, the Crown was awarded 384 acres of Kinohaku 25B2 leaving a 'residue' of 162 acres for the remaining minority of non-selling share holders.

(iii) Once the Kinohaku East and West purchases were completed, the Crown quickly moved into negotiations over other Ngāti Kinohaku blocks including the Ketemaringi and Hurakia blocks.[166]

j) Even where the majority of shareholders refused to sell their interests (such as in Ngāti Kinohaku blocks such as Ototoika, Arapae and Mairoa) the Crown was still empowered by legislation to have its proportion of shares cut out.[167]

(i) Wilkinson sought more shares in the Kinohaku East 2 block and quickly bought the matter before the Native Land Court for conversion to Crown land.[168]

(ii) In Kinohaku East 1 Ototoika, Wilkinson had commenced collecting signatures on 21 May 1894. After an additional 31 acres were added to the 5836 acres originally claimed by the Crown, the non-selling owners who held 17 percent of the shares were left with 961 acres (or 14.1 percent) of the original 6828 acre block.

[166] Boulton, #A67, p 343
[167] Husbands and Mitchell, #A79, p 247
[168] Husbands and Mitchell, #A79, p 249

41.6 Employed tactics to limit the price it would have to pay for Māori land, including to Ngāti Kinohaku landowners and in order to maximise profits:

a) In all cases the Crown was interested in profits as the bottom line and would reduce the price paid to Maori landowners if the purchase would result in a loss rather than a profit.[169]

b) Native Purchasing Agent Wilkinson considered the lands in Kinohaku East as some of the best land in the Inquiry District. In determining the price to be paid for each respective interest, the Surveyor General provided the price to buy and then a higher price at which the land would be sold, the key consideration being the maintenance of the Crown's profit margin. [170]

41.7 Unfairly constrained the ability of Ngāti Kinohaku landowners to lease their land as an alternative to sale:[171]

a) In April 1891, Ngāti Kinohaku rangatira Whitinui argued that Māori landowners were prevented from securing some financial benefit from their newly-titled land without being forced to accept its definitive alienation.

b) On 16th June 1893, nine owners of the Kinohaku West G block, including Te Whare Hotu, Whitinui, Tamihana Te Huirau, Mere Te Rongopamamao and Pepene Eketone, wrote to the Native Minister to protest the Government's pre-emptive rights which prevented Maori landowners from exercising any rights over their lands, including the ability to enter leases and on terms and conditions determined by Māori landowners.[172]

c) Despite the protests, the Native Land Court Act of 1894 re-established the Crown's right of pre-emption

[169] Boulton, #A67, p 318 - 319
[170] Boulton, #A67, p 364
[171] Husbands and Mitchell, #A79, p 479
[172] Husbands and Mitchell, #A79, p 488

throughout the whole of North Island. This statutory monopoly encouraged sales to the Crown by preventing Māori from leasing their lands as an alternative to selling it to the Crown. Crown pre-emption also depressed the prices that those Māori who did sell their land received.[173]

d) This restriction was not lifted until 1900.[174]

41.8 Between 1884 and 1910, the Crown acquired excessive amounts of land from which the claimants had interests in:[175]

a) Taumatatotara – Original area was 11544.3 acres, the Crown acquired 56% of the blocks amounting to 2798.4 acres.

b) Kinohaku East – Original area was 52403.2 acres, the Crown acquired 52.7% amounting to 21877.0 acres.

c) Kinohaku West – There is a large number of blocks within Kinohaku West. The combined original area for Kinohaku West R Orokumara, Kinohaku West 3, Kinohaku West 3 Kawakawa, Kinohaku West 12A and Kinohaku West B, C, and D, totalled 6,304.6 acres. The Crown acquired all of these lands through Crown Purchasing. The majority of the remaining 156,113.7 acres were acquired through Crown purchasing also. There is no Maori land remaining in Kinohaku West: A, 12, O Marae, K Ratapoike, F Heruera, S Tawarau, N Kuriahuhu, M Piripiri and H Moeatoa.

d) Taharoa A, B1A, B1B and B2 – Original combined total area for all these blocks was 24,208.4 acres, the Crown acquired all of Taharoa B1A, B1B and B2 and 8.4% of Taharoa A.

e) Harihari – Original area was 4840.4 acres and the total block was acquired by the Crown (Government Award).

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[173] Husbands and Mitchell, #A79, p 519
[174] Husbands and Mitchell, #A79, p 489
[175] Innes, Mitchell and Douglas, #A21, Index

f) Awakino – Original area was 24082.5 acres and again the entire block was acquired by the Crown (Government Awards).

g) Te Karu o te Whenua – Original area was 24450.8 acres. The Crown acquired 53% of the block.

h) Marakopa – Original area was 5004.1 acres. 67.6% was acquired by the Crown amounting to 2334.0 acres. There were 16 private purchases made and 3 titles were Europeanised.

i) Marakopa Reserve – This reserve was set aside for Māori. No alienations taking place.

j) Te Kumi – Out of 2711.4 acres, 18.4% was acquired by the Crown. The majority of these lands were taken through private purchases totalling 69.0%. 11.3% were Europeanised, 0.6% taken for public works and the remaining 0.7% was alienated by other means.

k) Ototoika[176]

l) Pokuru – originally had 3200.0 acres, 25.4% was acquired by the Crown, 1.4% Europeanised, and 3.1% by other means.

PREJUDICE

42. The claimants say that they have been prejudicially affected by the policies and practices, acts or omissions of the Crown as alleged in this fourth cause of action in the following ways, inter alia:

42.1 The loss of Ngāti Kinohaku individuals and collective mana and rangātiratanga;

42.2 Destruction of social structures and organisation of iwi, hapu and whānau of Ngāti Kinohaku;

[176] Refer Kinohaku East

42.3 Destroyed relationships amongst Ngāti Kinohaku kin, the effects of which are still prevalent today;

42.4 Dispossessed Ngāti Kinohaku of their lands which they had strong spiritual ties to; and

42.5 The diminution of the Ngāti Kinohaku traditional land base.

J. SIXTH CAUSE OF ACTION: COMPULSORY ACQUISITIONS

DUTIES

43. At all times the Crown had duties to:

43.1 Actively protect Ngāti Kinohaku and their lands to the fullest extent practicable;

43.2 Act reasonably and with the utmost good faith towards Ngāti Kinohaku;

43.3 Adopt a fair process in any dealings with Ngāti Kinohaku and their lands;

43.4 Recognise and uphold Ngāti Kinohaku customs and practices;

43.5 Ensure that Ngāti Kinohaku were left with a sufficient land based for their present and future needs; and

43.6 Ensure that it did not divest itself of its Treaty obligations by conferring inconsistent jurisdiction on its departments and local authorities.

BREACH

44. In breach of its duties, and in breach of the promises made as part of Te Ohāki Tapu, the Crown:

44.1 Failed to consult with Ngāti Kinohaku prior to the enactment of Public Works Acts and introduced (& operated) a public works regime which allowed Ngāti Kinohaku lands and resources to be compulsorily taken from them.

a) The Crown's first use of the public works legislation was in 1897 and in accordance with the Public Works Act 1894;[177]

b) Under the Public Works Act 1894:

(i) If title to Native Land was not derived from the Crown, all that was required to take the land was the preparation of a survey plan, before the Governor signed an Order in Council;[178]

(ii) It was not legally necessary to issue a Notice of Intention Take the land;[179] and

(iii) There was no opportunity for objections, or for objections to be considered.[180]

(iv) Explicitly removed the need to consult or obtain the consent of Māori landowners affected by the laying out of road.[181]

c) The provisions of the Public Works Act 1894 were carried through to 1984. It therefore established Public Works takings for nearly 90 years.[182]

44.2 Failed to ensure Māori were notified of Public Works takings in the same manner as Europeans:[183]

a) Europeans, who had to have a title in their name registered in the Land Registry, were readily identifiable and required to be personally notified;[184]

b) Māori did not have to have a registered title, and even when they did there might be multiple owners, making notification more difficult;[185]

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[177] Alexander #A63, *Public Works and other takings in Te Rohe Potae*, p 72
[178] Alexander #A63 p 75
[179] Alexander #A63 p 75
[180] Alexander #A63 p 75
[181] Alexander, #A63, p 69
[182] Alexander, #A63, p 25
[183] Alexander #A63 pp 34-35
[184] Alexander, #A63, p 35

c) The notification process for Māori-owned land was both different and less stringent;[186]

d) The principal form of notification was to be a published Notice of Intention to Take in the New Zealand Gazette, its Māori version the Kahiti, and in a local newspaper. This was supplemented by personal notification of individual owners (where a title had been registered in the Land Registry) if their addresses were known;[187]

e) Following notification there was a forty-day period during which objections in writing could be sent to the Minister of Public Works;[188]

f) The Minister had the option to appoint someone to hear the objections and provide him with a report and recommendations about the objections;[189] and

g) Any objections were then accepted or rejected by the Minister, who was the titular promoter of the taking, in that the taking action was being carried out by his Department (and often for public works to be constructed by his Department).[190]

44.3 Failed to actively protect Ngāti Kinohaku sites of significance when acquiring land for public purposes:

a) Urupa and other special sites of special significance were not exempted from being taken for Public Works.[191]

b) Before each taking it was necessary that the Governor was satisfied that no buildings, cultivations or urupa were affected. If they were, he was obliged to issue a specific consent allowing the taking to proceed.

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[185] Alexander, #A63, p 34
[186] Alexander, #A63, p 34
[187] Alexander, #A63, p 35
[188] Alexander, #A63, p 35
[189] Alexander, #A63, p 35
[190] Alexander, #A63, p 35
[191] Alexander, #A63, p 42

c) The intangible connection that Māori had with a particular place was viewed as "sentiment" which might have to give way to the greater good. The need for development was prioritised.[192]

d) The Crown's reaction to sites of significance was more to mitigate effects and compliance with Crown policy rather than avoiding (and therefore protecting) such areas altogether:[193]

(i) The construction of the Kapuni and Maui natural gas pipelines affected many Ngāti Kinohaku blocks and sites of significance.

(ii) The gasline route was secured by registered easement on affected land owners blocks without need to obtain landowners consent and/or agreement. The effect of the easement was to place limitation on the legal rights of the Ngāti Kinohaku, in this case Ngāti Te Puta, landowners as to what they could do with their land.

(iii) The Kapuni gasline passes close to a Ngāti Kinohaku urupa located on land legally defined as Tapuiwahine A13 block.

(iv) The presence and location of the urupa was brought to the Crown's attention, with the Crown noting that the pipeline would "pass through or very near an old Māori cemetery nearby".[194]

(v) The Resident Engineer visited the site and determined that "the burial ground is approximately 100 foot" in clearance from the centre line of the proposed pipeline route. [195]

[192] Alexander, #A63, p 38
[193] Alexander, #A63, p 43
[194] Alexander, #A63, p 232
[195] Alexander, #A63, p 232

(vi) On closer inspection, the Crown official determined that the planned route was therefore of acceptable proximity to the urupa. Such determination was made in accordance with Crown policy, rather than in consultation or agreement of Ngāti Te Puta landowners.[196]

(vii) The Maui gas line was laid out in the 1970s. The Proclamation laying out the gas line was similarly registered on affected landowners titles.

(viii) Today, Motiti Pa is sandwiched between the Maui and Kapuni gas lines. Consequently, actual and on-going costs incidental to the diversion of construction systems and to accommodate gas lines are (forced) met by Motiti Pa Trustees and beneficial owners without compensation and/or financial assistance from the Crown.[197]

44.4 Failed to monitor delegated actions and powers to Ministries such as the Ministry of Works.[198]

a) The lack of monitoring meant that when Māori complained to the Crown that they had not received any compensation, the Crown would not insist that a local authority fulfil its obligations, instead merely observing that compensation was a local authority rather than central government responsibility.[199]

b) A quarry site on Kinohaku East 2 block (which was taken under the Public Works Act) had been established and used at the end of Troopers Road (located between Piopio and Oparure).

c) Incidental (Public Works Department) activities encroached on to Māori land known as Kinohaku East No.

[196] Claimant evidence
[197] Claimant evidence
[198] Alexander, #A63, p 44
[199] Alexander, #A63, pp 43 - 44

2, section 17 which was owned by five owners, including Huihana Parehuiroro (nee Barrett);

d) 2000 cubic yards of limestone from Kinohaku East No 2, section 17 was removed before it was discovered that such taking was from non-Crown land and that such taking had been without the owners consent.

e) At the end of December 1946, the Māori owners, including Huihana Parehuiroro demanded a royalty payment and insisted on compensation for the previous takings;

f) The Department's response was that quarrying had only been on an occasional basis, and was not a commercial enterprise where royalty payments would be justified and that implied consent (even though the takings were made without the owners knowledge and/or consent) had been provided due to the passage of time.

g) The survey plan showing the proposed taking was not completed and approved until March 1949, and was not forwarded to the Public Works Department until two months later. The taking in this case was inevitable and completed in the interests of protecting the Ministries ability to take metal rather than protecting the landowners.

h) Other blocks for which the claimants have interests were taken for quarry:[200]

(i) Karu o te Whenua B5;

(ii) Kinohaku East 4 & 5;

(iii) Kinohaku East 2; and

(iv) Karu o te Whenua B5

[200] Alexander, #A63, p 50

44.5 Failed to adequately protect the already miniscule land base of Ngāti Kinohaku by allowing further alienations by way of public works takings through out the 19th and 20th centuries, examples of which include the following lands compulsorily acquired from the claimants.[201]

a) Karu o te Whenua block and its subdivisions (in excess of 225 acres for various purposes, mostly road);

b) Kinohaku East block and its subdivisions (in excess of 240 acres for various purposes, mostly road)

c) Kinohaku West block and its subdivisions (in excess of 278 acres for various purposes, mostly road);

d) Piha 1 & 2 blocks and its subdivisions (in excess of 7 acres for road);

e) 4 acres of Taharoa A block for a native school;

f) 3 acres 32 roods of Taumatatotara 1D2B for road; and

g) 24 acres Taumatatotara and its subdivisions for road.

44.6 The Crown treated takings for native and public schools differently. For Public Schools, the Crown used the Public Works Act to take land and therefore provide a public school. For Native Schools, the Crown applied a "no gift, no school" policy[202] whereby Māori communities had to first provide land (i.e. by gift to the Crown) before a school could be established.[203]

a) Ngāti Kinohaku children (and their parents) were eager to take advantage of education opportunities provided by the Crown.

b) In September 1902, Whare Hotu and seven others wrote to the Native Minister asking that a Native School be established at Oparure. They told the Minister that they

[201] Alexander, #A63, Database
[202] Alexander, #A63, p 14
[203] Alexander, #A63, pp 395 - 401

were of Ngāti Kinohaku hapu, there were 32 children in their settlement ready to be schooled, and they could offer two acres as a site. Their request was because "the school at Te Kuiti is at such a distance, and the road is exceedingly bad in the winter". The Crown made no response.

c) Three further requests were made from December 1902 to July 1904, with Crown approval finally provided by November 1904.

d) The site for Oparure Native School ("the School") was provided by Ruita Te Mihinga and the transfer of three acres to the Crown recorded an amount of 5 shillings as consideration. This was regarded as a nominal amount, but the transfer was considered as a gift for the specific purpose of a native school in any case.

e) In August 1906 the Inspector reported what he considered to "a gross breach of faith between the Government and Mrs Lucy Josephs (Ruita Te Mihinga)".[204] The breach concerned the destruction of crops which Mrs Josephs had specifically asked to be protected.

f) By 1923 Pakeha children outnumbered at the School and the Minister of Education approved the transfer of the School to the Auckland Education Board, to be run as a public school. The Education Department did not consult or attempt to inform the Oparure community of the change.

g) By letter dated 7th August 1923, Atutahi Porokuru and 46 others wrote to the Director of Education to protest, citing the original purpose for which the site had originally been provided. No response was received.[205]

[204] Alexander, #A63, p 395
[205] Alexander, #A63, p 401

Scenery Preservation

44.7 The Scenery Preservation Act 1903 and Public Works Amendment Act 1903 added scenery preservation as another purpose which came within the definition of a 'public work'. The obligations towards Māori, particularly the lack of requirement to consult/obtain consent of Māori landowners affected by takings for scenery preservation purposes, were the same as for all public works takings.

44.8 Between 1904 and 1924 there were a number of takings for scenery preservation or scenic purposes;[206]

44.9 The majority (51 out of 58) of these takings were from Māori owners and were of relatively large areas (as compared to most takings for other purposes at the time);[207]

44.10 Between 1906 and 1911, the government – employing public works and sometimes also scenery preservation legislation – compulsorily acquired about 481 acres of Māori land as part of its efforts to secure control over and develop tourist operations at Waitomo and to preserve the scenic qualities of nearby lands;[208]

44.11 The Crown compulsorily acquired the following blocks of land for scenic or scenery preservation purposes, under which the claimants claim interests:[209]

a) 7 acres 0 roods 6 perches of Kinohaku West 11D3A;

b) 8 acres 2 roods 18 perches of Kinohaku West 11D3B;

c) 18 acres 1 roods 16 perches of Kinohaku West 12B2B;

d) 8 acres 2 roods 16 perches of Kinohaku West L2B;

e) 155 acres 0 roods 32 perches from Karu o te Whenua B2B5A;

[206] Alexander, #A63, p 429
[207] Alexander #A63 p 429
[208] Cleaver, #A25, p 296
[209] Alexander #A63, Database

f) 1 acres 2 roods 17 perches of Mangaora 1;

g) 118 acres 0 roods 2 perches of Mangaora 3;

h) 6 acres 1 roods 3 perches of Mangaora 4

i) 5 acres 1 roods 24 perches of Taumatatotara; and

j) 84 acres 3 roods 35 perches of Taumatatotara 5.

PREJUDICE

45. The claimants say that they have been prejudicially affected by the acts and.or omissions of the Crown as alleged in this seventh cause of action as follows, inter alia:

45.1 The continued alienation of Ngāti Kinohaku land base;

45.2 Loss of mana tangata, mana whenua and rangātiratanga; and

45.3 Affected sacred sites, waahi tapu and values.

K. SEVENTH CAUSE OF ACTION: LAND CONSOLIDATION AND DEVELOPMENT

DUTIES

46. At all times, the Crown had duties to:

46.1 Actively protect Ngāti Kinohaku lands to the fullest extent practicable; and

46.2 Ensure its practices, policies and procedures permitted Ngāti Kinohaku to develop their land as they saw fit.

BREACH

47. In breach of its duties, the Crown failed to assist Ngāti Kinohaku to develop and administer their lands and resources to the fullest extent practicable:

47.1 The Crown continued to assume responsibility of Māori land in the form of the consolidation and development schemes and in the process, continued to suspend Māori landowners rights to deal with their lands as they saw fit.[210]

Consolidation schemes

47.2 Plans for consolidation development in the Inquiry District were announced in 1927.[211]

47.3 Iwi leaders opposed consolidation on the basis that consolidation schemes would continue in the same vain as other Crown initiatives whereby the promises and benefits promised never came to fruition and to the detriment of Māori landowners and their lands.[212]

47.4 In March 1931 an order under section 132 of the Native Land Act 1909 was made (for the purpose of enabling a consolidation scheme) over lands which became apart of the Maniapoto consolidation scheme, including Ngāti Kinohaku lands:

a) 860 acres of Kinohaku West;

b) 98 acres of Marakopa;

c) 12468 of Kinohaku East; and

d) 1535 of Tapuiwahine block.

47.5 However, overall progress of the Maniapoto Consolidation scheme was marked by various issues, including Crown inter-agency disputes over survey liens[213].

47.6 In respect of consolidation 'costs', the Crown was reimbursed with either a award of land, a charging order over the

[210] Hearn, #A69, *Land titles, land development and returned soldiers in Te Rohe Potae*, p
[211] Luiten, #A24, *Local Government in Te Rohe Potae*, p 135
[212] Luiten, #A24, p 139
[213] Hearn, #A69, p 79

consolidation scheme or a payment in cash from the Waikato-Manaipoto District Māori Land Board;[214]

47.7 Several blocks, including those of which the claimants claim interests, were wholly and/or partly awarded to the Crown, with some Māori landowners entering into separate arrangements in respect of individual blocks. These 'awards' to the Crown further fragmented the Ngāti Kinohaku land base:[215]

a) 218 acres from Taumatatotara blocks;

b) 128 acres from Kinohaku East blocks; and

c) 902 acres from Kinohaku West block.

d) 23 acres from Kinohaku East 3D9A

e) 84 acres from Kinohaku East 3D3B2

f) 13 acres from Kinohaku East 2 Sec 6B2

g) 8 acres from Kinohaku East 4B2B2

h) 59 acres from Kinohaku West 1A1B2

i) 150 acres from Kinohaku West B2

j) 309 acres from Kinohaku West 3B

k) 24 acres from Kinohaku West 11B2B2A2

l) 360 acres from Kinohaku West S1B3

m) 37 acres from Taumatotara 4B3

n) 46 acres from Taumatotara 4B4

o) 20 acres from Taumatotara 5

p) 95 acres from Taumatotara 6B1

q) 20 acres from Taumatatotara

[214] Hearn, #A69, pp 89 - 90
[215] Hearn, #A69, Tables 2.4, 2.5 and 2.6 at pp 89-92

47.8 By 1929, many difficulties became apparent with the Maniapoto and other consolidation schemes, including a failure (on the Crown's part) to establish defined objectives and to develop an appropriate strategy for implementation of its consolidation schemes.[216]

47.9 Between 1942 and 1947, many blocks were released from the 1931 order restricting dealings with their lands, but with the Crown first ensuring that any survey liens or consolidation costs were paid;[217]

47.10 By 1949, the Crown's policy moved from consolidation to title simplification. For Ngāti Kinohaku landowners with lands subject to the consolidation schemes, they had to first seek a release of their lands from the 1931 order prohibiting private dealings.

Development schemes

47.11 Initiated by Apirana Ngata, the Māori Land Development Programme in the Inquiry District was established pursuant to section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929. The objective was that of the previous consolidation schemes but allowed for speedier development. [218]

47.12 As with the consolidation schemes, development schemes were born out of promises of the benefits from Māori land development.

47.13 At the same time, an order prohibiting private alienation was still imposed on all land so Ngāti Kinohaku landowners were prohibited from exercising many of the key rights of ownership, especially those related to the economic development of the land. [219]

47.14 Under the Māori Land Development programme, Ngāti Kinohaku landowners were to:

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[216] Hearn, #A69, p 65
[217] Hearn, #A69, p 99
[218] Hearn, #A69, p 158, 168
[219] Hearn, #A69, p 103 - 104

a) Supply land at its unimproved value,

b) Supply the labour at bare sustenance rates in exchange for the Crown providing capital, scheme management, supervision, and technical advice. [220]

c) Make major concessions and accept serious risks.

47.15 By such terms, the Crown sought to minimise its own risks.[221]

Oparure Development Scheme

47.16 Ngāti Kinohaku landowners requested their lands to be included in a development scheme as they had no other options to deal with mostly fragmented units of land.[222]

47.17 The levels of debt recorded for various development schemes established prior to 1949 suggested that development costs were frequently exceeded and that the return of land to the claimants was likely to be delayed;[223]

47.18 The Native Commission of 1934 cited the Oparure Development Scheme as an example of a scheme in which expenditure had been considerably in excess of what the land could reasonably have been expected to support.[224]

47.19 When inspecting the Oparure development lands, Crown officials appeared to be more interested in the success of its overall development schemes in the King Country area, rather than the Oparure development itself.[225]

47.20 By 1939, the debt associated with the Oparure Development Scheme was high and fell to the affected land owners to repay.[226]

[220] Hearn, #A69, p 181
[221] Hearn, #A69, p 573
[222] Hearn, #A69, p 230
[223] Hearn, #A69, p 274
[224] Hearn, #A69, p 189
[225] Hearn, #A69, p 234
[226] Hearn, #A69, p 235

PREJUDICE

48. The claimants say that they have been prejudicially affected by the acts and/or omissions of the Crown as alleged in this tenth cause of action as follows:

48.1 Have been and continue to be prevented from developing, exploiting and managing their land and resources in a manner consistent with their cultural preferences;

48.2 Have been and continue to be prevented or hampered in the proper economic utilisation and development of their remaining land and resources and hand and continue to have diminished opportunities to participate in the mainstream economy; and

48.3 Have suffered and continue to suffer a consequent loss of mana.

L. EIGHTH CAUSE OF ACTION: LOCAL GOVERNMENT

DUTIES

49. At all times, the Crown had duties to:

49.1 Actively protect Ngāti Kinohaku and uphold the tino rangatiratanga and autonomy of Ngāti Kinohaku;

49.2 Act honourably and with the utmost good faith towards Ngāti Kinohaku;

49.3 Uphold the tino rangatiratanga of Ngāti Kinohaku; and consult with Ngāti Kinohaku, particularly in respect of measures which may diminish their rangatiratanga and autonomy.

BREACH

50. In breach of its duties, and in breach of promises made as part of Te Ohāki Tapu, the Crown:

50.1 Failed to provide the Native Committee's promised as part of Te Ōhākī Tapu with any real power, resourcing and support.

a) The imposition of the Local Government regime into the Inquiry District was done without prior consultation or consent of Māori, including Ngāti Kinohaku and was instead a matter of the claimants accepting the inevitability of the regime.[227]

b) One of Ngāti Kinohaku's early experiences with local government was in the form of a ranger who was sent to impound animals on roads. When the ranger arrived at Oparure, a large number of the population turned out en masse.[228]

50.2 Failed to ensure that local government organisations acted in a manner either consistent with, or otherwise not in a manner inconsistent with, the principles and terms of Te Tiriti:

(a) The Local Government regime was initiated in the 1870s and was devised to meet the needs of Pakeha settlement and based on Pakeha ideas of land tenure and use.[229]

(b) The legislation establishing and continuing the County Councils failed to provide that those organisations must act consistently with the principles of the Te Tiriti or consult with and obtain consent from Māori when significant land or other resources were affected by decisions of those organisations;

(c) The Local Government Act 2002 continues in this fashion and does not require that Councils act consistently with the principles of the Te Tiriti;

50.3 Failed to consult with Ngāti Kinohaku and obtain their consent for measures which might affect or diminish their rangatiratanga and local autonomy when delegating powers and functions to local government.

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[227] Luiten, #A24, p 95
[228] Luiten, #A24, p 95
[229] Luiten, #A24, p 20

a) Since the enactment of the Constitution Act 1852 the Crown has delegated some of its powers and functions to subordinate organisations.

b) The Waitomo County Act 1904 which established and continued the Waitomo County Council;[230]

c) The Local Government Act 1974 providing for the establishment of the Waitomo District Council.

d) All of the statutes were and/or devoid of provisions to ensure that Te Rohe Pōtae Māori were adequately represented in local government to protect their tino rangatiratanga, whether by way of delegation of powers, special seats or similar provisions:[231]

50.4 From the 1960s town and country planning became an important function of county government under the Town and Country Planning Act 1954, administered by the Ministry of Works. The Town & Country Planning Act enacted compulsory town planning rules which discouraged multiply owned and occupied land. Instead, land was divided into zones, with one dwelling per title and minimum road frontage. This style of planning was promoted as being a matter of national interest and only farmers were allowed exceptions to put up more than one dwelling.[232]

a) This style of planning had a negative impact on Ngāti Kinohaku landowners because it forced them to move away from traditional areas and their values were consistently over-ridden in favour of 'national progress'.[233]

b) Traditional Ngāti Kinohaku housing included a separate kauta or cookhouse. Kauta were no less hygienic than

[230] Luiten, #A24, p 12
[231] Luiten, #A24, p 10 - 15
[232] Luiten, #A24, p 24 - 25
[233] Claimant evidence

Pakeha homes, but did not fit the Pakeha mould of suitable housing.[234]

50.5 Rates were the primary source of funding for the local government regime. Ngāti Kinohaku were prejudiced by the imposition of the Crown's rating regime including the alienation of further lands as a result of rates pressures.[235]

a) In Te Rohe Potae, Māori involuntarily contributed in large measure to the existing network of roads, for which no monetary compensation, and no public acknowledgement, was made.[236]

50.6 Representation on Local government bodies in Te Rohe Potae largely remained a "white men's business" made up of personnel who also stood to benefit from works development such as farmers and land developers.[237]

(a) The impacts for Maori meant that their views, were always secondary to decisions which were met or best for public interests.[238]

(b) In more modern times, continued local body disregard for Māori interests can be seen in the lack of inclusion of tangata whenua in activities and planning with regard to significant landmarks and resources.[239]

50.7 Failed to ensure that local government organisations in Te Rohe Pōtae were, and are, observing and giving effect to Treaty principles and guarantees:

a) The legislation establishing and continuing the County Councils[240] failed to provide that those organisations must

[234] Robinson, #A31, p 96 and claimant evidence
[235] Claimant evidence
[236] Luiten, #A24, p 21
[8] Luiten, #A24, pp 14 - 15
[238] Luiten, #A24, p 348
[239] Luiten, #A24, p 349
[240] Luiten, #A24, pp 10 - 15

act consistently with the principles of Te Tiriti o Waitangi or consult with and obtain consent from Māori when significant land or other resources were affected by decisions of those organisations;

b) The Local Government Act 1974 failed to provide that District Councils must act consistently with the principles of Te Tiriti or consult with and obtain consent from Māori when significant land or other resources were affected by decisions of those councils.

50.8 Failed to ensure that local self management by iwi and hapū has been adequately recognised or provided for in that Te Rohe Pōtae Māori have not been provided with any material means to exercise decisions in accordance with the Treaty guarantee of tino rangatiratanga:

a) The Crown did not give effect to Te Rohe Pōtae Māori attempts to maintain local self management;[241] and

b) Instead the Crown introduced local government legislation which failed to provide that councils act consistently with the principles of Te Tiriti o Waitangi, or consult with and obtain consent from Māori when significant land or other resources were affected by decisions of those councils.

PREJUDICE

51. As a result of the Crown's acts and omissions, Ngāti Kinohaku claim that they are and have been prejudicially affected in that Ngāti Kinohaku have:

51.1 Been and continue to be prevented from freely exercising their tino rangātiratanga, including possession, management and control, in respect of their lands;[242]

51.2 Suffered and continue to suffer from land loss;[243] and

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[241] Refer to First Cause of Action: Failure of the Crown to Protect Te Tino Rangatiratanga
[242] Claimant evidence
[243] Also refer to Second and Fourth Causes of Action

51.3 Suffered and continue to suffer a consequent loss of mana.[244]

M. NINTH CAUSE OF ACTION: FORESHORE AND SEABED

DUTIES

52. At all times the Crown had duties to:

52.1 Actively protect the rights and property of Ngāti Kinohaku;

52.2 Actively protect Ngāti Kinohaku and their lands and resources to the fullest extent practicable;

52.3 Act reasonably and with the utmost good faith towards Ngāti Kinohaku;

52.4 Adopt a fair process in any dealings with Ngāti Kinohaku and their lands and resources;

52.5 Recognise and uphold Ngāti Kinohaku customs and practices;

52.6 Ensure Ngāti Kinohaku were left with a sufficient land base for their present and future needs; and

52.7 Ensure that Ngāti Kinohaku were accorded the rights and privileges of British subjects.

PARTICULARS

53. In breach of its duties to actively protect Ngāti KInohaku in the use of their land and resources to the fullest extent practicable, to act reasonably and with the utmost good faith towards Ngāti Kinohaku, the Crown has assumed ownership of the foreshore and seabed from Waikawau, Nukuhakari, Taharoa, Kiritehere, Marakopa, Tauhua into the Kawhia harbours and out to Karewa Island without:

53.1 Consultation with Ngāti Kinohaku;

53.2 Taking into account the continued ownership and occupation of the land adjacent to the foreshore and seabed between Waikawau to Kawhia, including Taharoa;

[244] Claimant evidence

53.3 Taking into account the importance of the foreshore and seabed to Ngāti Kinohaku as a resource and taonga.

53.4 The Crown assumed ownership of the foreshore and seabed for itself, without the consent of Māori and without compensation.

53.5 Important Ngāti Kinohaku coastal markers include the following:[245]

a) Haumia – large rock south side of mussel bed at Tokopapa;

b) Harihari – traditional site for finfish (handline fising) and paua;

c) Okahuroa – traditional fishing area;

d) Kopia – mussel bed and location of ancient battle site (wahi tapu);

e) Turiakina – known for kina and is used today by tangata whenua;

f) Tauhua – known for traditional fishing;

g) Tumoana – location of mussel bed;

h) Waipaua – location of mussel bed and natural spring (is known today as Willison's Beach);

i) Te waka – crayfish holes used at low tide;

j) Te Mimi o Ruaputahanga – important wahi tapu site of an underground spring out at sea. The spring was used for drinking water and used widely by inland tribes of Maniapoto to read tidal changes;

[245] Claimant evidence

53.6 Below is a map showing some of these coastal markers:

a) Ngāti Kinohaku claim interests in the foreshore and seabed, specifically their ability to seasonally utilise and access the foreshore and seabed and its resources, within the Te Rohe Pōtae Inquiry District.[246]

b) As part of Te Ohāki Tapu, the boundary of the Rohe Pōtae given by the petitioners extended 20 miles out to sea.[247]

53.7 Since 1840, the Crown has assumed ownership and authority to manage the foreshore and seabed and a right to delegate powers to local agencies, district and regional councils and harbour boards. This includes, but is not limited to, the following legislation and proclamations:

a) The Public Reserves Act 1854 enabling the Crown to make grants of any land below the high water mark in any harbour, arm or creek of the sea or any land on the seacoast;

b) The Harbour Boards Act 1878 and its successes, which did not recognise the claimants' rights and interests in the foreshore and seabed;

[246] Claimant evidence
[247] Mar, # A78, p 871

c) The Native Land Act 1909 which provided that Māori customary title was unenforceable against the Crown. Māori were therefore unable to bring proceedings in the Civil Courts for trespass to the foreshore on the basis of customary title;[248]

d) The Territorial Sea and Exclusive Economic Zone Act 1977, which vested the area between the low water mark and the outer limit of the territorial sea in the Crown;[249]

e) The Foreshores and Seabed Revesting Act 1991, which vested the foreshore 'in the Crown' and which, after the passage into law determined, amongst other things, the foreshore of the claimants to be 'land of the Crown';[250]

f) The Resource Management Act, which prohibits the claimants from carrying out a number of activities and works unless they are permitted by a regional coastal plan;[251]

g) The Foreshore and Seabed Act 2004, by which the full legal and beneficial ownership of the public foreshore and seabed was vested in the Crown, so that the public foreshore and seabed was held by the Crown as its absolute property;[252] and

h) The Marine and Coastal Area (Takutai Moana) Act 2011 which repealed the Foreshore and Seabed Act 2004 however failed to reduce the threshold tests for protected customary rights.

PREJUDICE

54. The claimants say that they have been prejudicially affected by the acts and/or omissions of the Crown as alleged in this eighth cause of action as follows, inter alia:

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[248] Section 84
[249] Section 7
[250] Section 9A
[251] Section 12(2)
[252] Section 13

54.1 The loss of ownership and control of important taonga;

54.2 Further destruction and impact upon Ngāti Kinohaku mana and rangatiratanga; and

54.3 Impacted on the relationship Ngāti Kinohaku have with Tangaroa.

N. TENTH CAUSE OF ACTION: ENVIRONMENTAL DEGRADATION

DUTIES

55. At all times, the Crown had duties to:

55.1 Actively protect the land and natural resources of Ngāti Kinohaku;

55.2 Act honourably and with the utmost good faith towards Ngāti Kinohaku in respect of their environment;

BREACH

56. Up to and as at 1840, Ngāti Kinohaku exercised tino rangatiratanga over the environment within their rohe.[253]

57. Since 1840, the Crown has asserted management and control over the Ngāti Kinohaku environment, including flora and fauna, with a number of legislative measures which empowers it or its delegated bodies to manage and control the environment.

58. Until recently, most of the authorities delegating powers did not require these bodies to observe or give effect to the guarantees/principles of Te Tiriti.

59. Currently, the Resource Management Act 1991 and local authorities plans under-recognise the value and significance of mahinga kai sites, such as pa tuna, as basic significant cultural sites.[254]

60. Although the current environmental management regime recognises a requirement to consult the claimants in respect of environmental management it does not sufficiently recognise customary Māori system of

[253] Claimant evidence
[254] Belgrave & Ors, #A76, *Te Rohe Potae Environmental and Wahi Tapu Report*, p 317

authority, not does it allow the claimants effective involvement in the management and preservation of indigenous ecosystems.

61. The progressive decline in the availability and quality of mahinga kai over the claimants land and resources such as the many waterways and waahi tapu sites which comprised fish species such as tuna, fresh water crayfish and taniwha.[255]

62. Adverse effects on the various waterways on the claimants' lands and natural resources, comprised of limestone caves and considered as Pa tuna by the claimants became limited, to the point where they became inaccessible and unable to provide for the claimants and their whanau.[256]

RELIEF

63. The claimants, being desirous to achieve the removal of the prejudice inflicted upon them seek recommendations as follows:

63.1 Findings that the Crown breached the principles of the Treaty as set out in the above Amended Statement of Claim;

63.2 That the Crown provides a full and comprehensive apology for the breaches of the principles of the Treaty as outlined in the Amended Statement of Claim;

63.3 That the Crown provide full and comprehensive financial compensation;

63.4 That the Crown return all land owned by the Crown within the claimed area and any improvements thereon;

63.5 Pursuant to sections 8A-8HJ of the Te Tiriti Act 1975 return to the claimants all relevant Crown land, including:

a) Land owned by any state owned enterprise;

b) Land held by an institution under the Education Act 1989; and

[255] Belgrave & Ors, #A76, p 23 and claimants evidence
[256] Belgrave & Ors, #A76, p 316

c) Land vested under the New Zealand Railway Incorporation Restructuring Act 1990, or any interest in any such land and together with any improvements thereon.

63.6 A binding recommendation for the compulsory resumption in favour of the claimants of all Crown forest land and licensed land situated within the claim area pursuant to the Crown Forestry Assets Act 1989 together with 100% of the compensation calculated in the First Schedule to the Crown Forestry Assets Act 1989 together with all accumulated rentals held by the Crown Forestry Rental Trust in relation to the Crown forest lands and licensed lands;

63.7 The provision of easements and such other access as is necessary to relieve all the claimants land within the claim from its status as landlocked land;

63.8 Recognition of the claimants' tino rangātiratanga and the restoration of the claimants self-governance including appropriate recognition by all Crown Departments and Agencies and Local Authorities within the claim area;

63.9 Make provision for the participation of the claimants on all statutory boards, authorities, agencies, companies and other Crown organisations that function within the claim area;

63.10 Pay the full costs of the claimants for the preparation and presentation of this claim and the cost of recovering any land recommended to be returned or other costs incurred in securing the implementation of recommendations; and

63.11 Any further relief that this Tribunal deems appropriate.

64. The claimants seek leave to amend this amended Statement of Claim as further commissioned research becomes available and as a result of further evidence and particulars presented to this Tribunal as part of the hearing process.

This Amended Statement of Claim is filed by **Aidan Henry Charles Warren/Haylee Putaranui,** Solicitors for the claimants. The address for service of the claimants is at the offices of McCaw Lewis Lawyers, Solicitors, Level 1, One on London, 1 London Street, (P O Box 9348, DX GP20020), Hamilton.

Documents for service on the abovenamed claimants may be left at that address for service or may be:

a. Posted to the solicitor at P O Box 9348, Hamilton;

b. Left for the solicitor at a document exchange for direction to DX GP20020, Hamilton; or

c. Transmitted to the solicitor by facsimile to (07) 839 4652.

DATED this 16th day of December 2011

A H C Warren / H M R Putaranui
Counsel for the Claimants