

IN THE WAITANGI TRIBUNAL

**WAI 898
WAI 2351
WAI 1112
WAI 1113**

IN THE MATTER of The Treaty of Waitangi Act 1975 (as amended)

AND Claims in the King Country Inquiry consolidated under Wai 898

AND the Wai 2351 claim by Frank Thorne on behalf of himself and for the benefit of Ngāti Hikairo

AND the Wai 1112 claim by **MANIHERA FORBES** and **MERE GILMORE** on behalf of themselves and Ngāti Hikairo

AND the Wai 1113 claim by **MANIHERA FORBES** and **MERE GILMORE** on behalf of themselves and Ngāti Hikairo

**BRIEF OF EVIDENCE OF
JACK CUNNINGHAM, METO HOPA, AND FRANK KĪNGI THORNE
ON THE LOSS OF THE “RETURNED LANDS”**

Dated this 28th day of March 2013

WACKROW WILLIAMS & DAVIES LIMITED
LEVEL 14, 48 EMILY PLACE
P O BOX 461
DX CP 20503
AUCKLAND
PHONE: (09) 379 5026 FAX: (09) 377 6553
SOLICITOR: Dominic G S Wilson
EMAIL: dominic@wwandd.co.nz

Introduction

1. This Joint Brief of Evidence is by Jack Cunningham, Meto Hopa, and Frank Thorne.
2. This Joint brief of evidence is for the Wai 1113, Wai 1112, and Wai 2351 claims and relates to the Crown's breaches of the Treaty of Waitangi following the "return" of certain confiscated lands to individuals of Ngāti Hikairo. The brief follows the losses of the lands "returned" to Ngāti Hikairo individuals following the confiscation.
3. Frank Thorne is the principal writer of the oral and traditional history report of Ngāti Hikairo called "*Te Maru-ō-Hikairo*". A section of "*Te Maru-ō-Hikairo*" discusses the fate of the lands "returned" to Ngāti Hikairo individuals.¹ This brief of evidence draw upon that report and draws also upon the report by Mr Innes for the Waitangi Tribunal.²

Overview of loss

4. A key claim for Ngāti Hikairo is that the Crown failed to ensure Ngāti Hikairo retained enough of their lands within the Confiscation District for their present and future needs. Ngāti Hikairo estimates³ that the Crown confiscated about 68,000 acres of land from the iwi and then "returned" about 6,100 acres to individuals in various lots within the Pirongia Parish, Ngāroto Parish, Mangapiko Parish, and in the Town of Alexandra West

¹ Wai 898 #A98, pp 275-278

² Innes, #A30

³ Based upon the report by Innes, #A30 and Douglas *et al* #A21. However, use of geospatial computer software allows for an apparently accurate estimation of land loss. On this basis Ngāti Hikairo estimate a total loss of about Acres: 97,549 (Hectares: 39,476) with Raupatu accounting for acres: 44,860 (Hectares: 18,154) with about 102.93 acres remaining in Ngāti Hikairo ownership within the Raupatu zone

and East. Using the analysis by Innes and Douglas *et al* and Māori Land Court figures all but around 96 acres of the “returned lands” were subsequently lost.

The “Returned” Lands

5. The following Crown awards were made to Ngāti Hikairo individuals: ⁴

| Parish | Lot | Area | Grantee |
|----------------------------|----------------------------|----------|---|
| Mangapiko | 323 | 10.37 | Hōne Kaora (John Cowell) from Hōne Te One |
| Pirongia | 305 | 409.23 | Matilda Morgan (Matire Te Rārangī) |
| “ | 306 & 330 | 250 | Hōne Te One |
| “ | 327 | 566 | Hōne Te One |
| “ | 329 | 200.33 | Hōne Te One |
| | 344 | 24.999 | Rāhera Mere Puku |
| “ | 285-90, 295, & 352-365 | 3,287.20 | Eruini Te Oka and 24 others (these tūpuna were described as rebels who had surrendered) |
| Ngāroto | 15, 22, 23, & 24 | 203.21 | Wiremu Kārewa |
| “ | 27, 28, 109, 118, & 119 | 256.06 | Hōne Te One |
| “ | 82 | 50.52 | Hōne Wirihana |
| “ | 99, 100, 101, & 102 | 201.35 | Kipa Te Kotuku |
| “ | 104, 105,110, &111 | 202.61 | Hōne Whitu |
| “ | 112,113,114, & 115 | 204.24 | Pipiwai |
| “ | 387 | 15.77 | Mata Kaora |
| “ | 388 | 10.17 | Matilda Morgan |
| “ | 84A | 23.16 | Opehia MacFarlane, Opehia did not seem to be part of the Ngāti Hikairo application |
| “ | 87 & 149 | 178.75 | Opehia MacFarlane, Opehia did not seem to be part of the Ngāti Hikairo application |
| Township of Alexandra West | 321 | 10.14 | Hōne Kaora (John Cowell) from Hōne Te One |
| “ | 246 | 0.5 | Wiremu Te Wheoro |

⁴ Innes, #A30, pp 80-97; there were a few other very small township awards in “Newcastle” Hamilton West, Puahue 1B, Pukekura 13, but outside the Inquiry District

| Parish | Lot | Area | Grantee |
|----------------------------|------------------|-----------------|---|
| Township of Alexandra East | 196, 196A, & 386 | 1.5 | Hōne Kaora (John Cowell) from Hōne Te One |
| “ | 202 | 1 | Wiremu Te Wheoro |
| “ | 195 | 0.5 | Wiremu Te Wheoro |
| Puniu Parish | 341 | 49.91 | Hōne Te One |
| Total | | 6,157.73 | |

Table 1: Crown Grants to Ngāti Hikairo individuals within Confiscation District

6. Ngāti Hikairo estimates that the iwi has lost about 98.4% of the awards that were “returned” to them inside the confiscation district as follows (in acres).⁵

| Block | Area | Remaining | Land lost |
|--------|---------|-----------|-----------|
| Awards | 6,157.7 | 96.3 | 6,061 |

Table 2: Overall approximate land loss from “returned” lands

7. Table 3 below shows the types of losses of the “returned” lands across all grantees from all iwi (figures in acres):⁶

| Block | Total Area | Crown purchases from awards | Private purchases from awards | Other | Remaining for Ngāti Hikairo |
|---------------------|------------|-----------------------------|-------------------------------|-------|-----------------------------|
| Pirongia Parish | 26,173 | 473 | 4411 | 164 | 94.8 |
| Ngāroto Parish | 21,572 | 0 | 1140 | 260 | 0 |
| Mangapiko Parish | 18,968 | 0 | 404 | 46.68 | 0 |
| Alexandra Townships | 1,656 | 0 | 10 | 6 | 1.5 |

Table 3: Approximate land loss figures

⁵ Based upon the report by Douglas *et al*, #A21

⁶ Based upon the report by Douglas *et al*, #A21 and Innes, #A30

8. Table 3 shows that most of the “returned” lands were lost to *alleged* private purchases and some were lost to Crown purchases. Indeed, none of the lands “Returned” to Ngāti Hikairo individuals were given any restrictions against alienation.⁷
9. The majority of the “Returned” lands were lost to *alleged* private purchases in a relatively short period after the awards in the 1870s through to 1930 (around 88%).⁸
10. The Whatiwhatihoe lands within the Confiscation District were awarded to Hōne Te One within Lots 329 (about 200.3 acres) and 330 (about 96 acres) of the Pirongia Parish, both awarded under the New Zealand Settlements Act 1863 and the New Zealand Settlements Amendment and Continuance Act 1865. Both Lots did not have any restrictions against alienation and have been alienated.⁹
11. The lands awarded at Whatiwhatihoe, Mātakitaki and Mangawawā have all been alienated.
12. Some of the awards of “Returned” lands appear to “ante-vested” to 13 March 1867 possibly to validate a pre-existing alienation.¹⁰ For example, Lots 15 & 22-24 of the Ngāroto Parish were sold on 23 June 1869, 2 years prior to the issue of the grant in 1871 and accordingly, it appears, this was the reason the grant was ante-vested to 13 March 1867.¹¹ Lots 27-28, 109, & 118-119 of the Ngāroto Parish were sold on 7 July 1869, nearly 2 years prior to the issue of the grant in 1871 and accordingly, it appears, this was the reason the grant was ante-vested to 13 March 1867.¹²

⁷ Boulton, #A67, p35

⁸ Based upon the report by #A21; Innes, #A30; Boulton, #A67, pp 35, 194

⁹ Innes, #A30, pp 55-6, 58-9

¹⁰ #A21; Innes, #A30, p13

¹¹ #A21; Innes, #A30, p36

¹² #A21; Innes, #A30, p36

Lot 329 of the Pirongia Parish was sold on 20 July 1869, about 1 year prior to the issue of the grant in 1870 and accordingly, it appears, this was the reason the grant was ante-vested to 13 March 1867.¹³

13. A significant portion of Ngāti Hikairo “Returned” lands awarded on the slopes of Pirongia Maunga were alienated to the Crown and put into a scenic reserve for conservation purposes. These lands form the bulk of the Pirongia Forest Park.¹⁴
14. When the awards were being surveyed in the Pirongia Parish in 1870, the surveyor Mr Richard Todd was killed. It was reported that Mr Todd received a number of warnings not to breach the aukati before he was killed.¹⁵ Certain Ngāti Hikairo traditions are that a reason for the killing was that the iwi would not let Mr Todd survey the collective iwi block into individual lots. Subsequently, Lot 327 was sold to the Crown in 1875 to appease the whakamā that was brought upon Ngāti Hikairo. Ngāti Hikairo have suffered from the stigma associated with the killing and this had had a long-lasting effect on the mana of Ngāti Hikairo.¹⁶

The lands today

15. Today, Ngāti Hikairo only have about 1.5 acres within the Alexandra East Township (Lots 196, 196A, & 386) and about 94.8 acres on the slopes of Pirongia Maunga within Lots 289 and 344 of the Pirongia Parish.¹⁷
16. None of the three areas of land are occupied by Ngāti Hikairo. In fact, the Alexandra East Township lands appear to have had

¹³ #A21; Innes, #A30, p36

¹⁴ Innes, #A30, pp 80-97

¹⁵ Marr, #A78, pp 111, 315

¹⁶ Innes, #A30, pp 57-58

¹⁷ Based upon the report by Innes, #A30 and iwi information

Pākehā living on them without rent for quite some time and a recent subdivision that affected part of the land was not notified to the owners because the local council and consent-holder claimed they could not find any of the owners.

17. Of the 2000 or so acres in the Te Rore and Harapepe areas awarded to Ngāti Hikairo, none remain in the ownership of Ngāti Hikairo. Six sections, in the Pirongia Township, remain with the descendants of certain Ngāti Hikairo tūpuna, who were deemed to be “kūpapa.” One is Te Haona Kaha Marae.