

IN THE WAITANGI TRIBUNAL

**WAI 898
WAI 1439 WAI 2353
WAI 2351 WAI 1112 WAI 1113**

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

- AND** the Wai 1112 claim by Manihera Forbes, Marlene Pikia Edwards, and Tiriata Thorne on behalf of themselves and Ngāti Hikairo
- AND** the Wai 1113 claim by Manihera Forbes, Marlene Pikia Edwards, and Tiriata Thorne on behalf of themselves and Ngāti Hikairo
- AND** Claims in Te Rohe Pōtae Inquiry consolidated under Wai 898
- AND** the Wai 1439 claim by John Pouwhare on behalf of the Ōpārau Station Trust
- AND** the Wai 2351 claim made by Frank Kīngi Thorne for and on behalf of himself and for the benefit of Ngāti Hikairo
- AND** the Wai 2353 claim by Hinga Whiu on behalf of herself and the Hōnerau Tai Hauāuru Whānau Trust

**CLOSING SUBMISSIONS
FOR NGĀTI HIKAIRO
DATED THE 22nd DAY OF OCTOBER 2014**

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MAY IT PLEASE THE TRIBUNAL

1. Māwhaiwhai

1.1 Introduction

1. The Ngāti Hikairo presentation of their claims remains cloaked in the mauri laid down by Kaumātua, Meto Hopa, at the hearing in November 2012 at Tokanganui-ā-noho marae.

2. Meto Hopa applied the metaphor of the spider's web to the claims. Meto Hopa gave this evidence:

*“He whatinga pūngāwerewere
Although this korero mentions the spider, it actually refers to a
spider's web, a māwhaiwhai or whare tukutuku. When the strands of
a web are pulled at or shifted, it strains and weakens the web. It may
break part of the web, or destroy it completely.
The moving or adjusting of boundaries can be likened to a spider's
web. When boundaries are crossed or adjusted it changes the 'web'
and may strain or weaken it”.¹*

3. It is submitted that where one part of the web is pulled by a Crown breach of the Treaty of Waitangi the whole web is put under stress. The metaphor captures the complex and wide-ranging impacts of the Crown's Treaty breaches across the whenua and among the iwi of Ngāti Hikairo.

4. These closing submissions will highlight that Ngāti Hikairo iwi suffered from Crown Treaty breaches in numerous forms. Few iwi have faced such a simply astounding array or number of grievances. For example their claims cover:

- Crown Raupatu and confiscation;
- Breaches of Te Pitihana (Te Ōhākī Tapu);
- Native Land Court costs and survey liens;
- The rapid and questionable Crown purchases;
- The negative Crown policies of colonisation and assimilation;
- The pre-Treaty transactions;
- Native Townships;
- Land Development Schemes;
- Māori Trustee and Local Government issues;

¹ Hopa, #I8, p4

- The degradation of the environment; and,
 - Public Works takings.
5. These are but a few of the types of Crown Treaty breach suffered by Ngāti Hikairo and which are discussed in these submissions.
 6. There were obvious impacts for these various Treaty breaches upon the iwi of Ngāti Hikairo such as large scale iwi loss of land and undermining of their tribal authority. However it is submitted that these various breaches all acted together in a complex pattern over time to pull, tug and cut at the web of the iwi.

1.2 Overview of the Essence of the claims

7. The first cut was the Raupatu and confiscation. These submissions will set out how the wars decimated the iwi and the ensuing confiscation halved Ngāti Hikairo's rohe. The confiscation would concentrate the iwi towards the eastern side of their rohe. Then once the Native Land Court was active in Te Rohe Pōtae, creating land titles with severable individualised interests, the Crown began a rapid and expansive purchase programme. Between 1895 and 1910 the iwi would alienate nearly another half of their remaining rohe. This even further concentrated the iwi around their Kāwhia lands.
8. Throughout the period since the Treaty of Waitangi was signed, the web was being stretched and strained by the Crown as it sought to exert authority in the land and to open up land for settlement. These submissions will describe how Ngāti Hikairo, a tohunga people, would assist with the establishment of the Kīngitanga to focus Māori unity and authority in the face of the Crown. In terms of that authority, the Crown was to strike at the web by opening up the Kāwhia harbour and surveying the contested Pouewe transaction. This was a significant factor in Ngāti Hikairo joining as the fifth tribe of Te Pitihana (Te Ōhākī Tapu) to jointly assert their authority and control. In doing so Ngāti Hikairo extended the boundary of Te Rohe Pōtae northward to include the iwi rohe in full. While the Crown dealt with Ngāti Hikairo Rangatira at this time as one of the five

tribes of Te Pitihana, the Crown's respect for the relationship with Ngāti Hikairo and the iwi's authority would wane and the Crown would begin to focus on its larger neighbours and to ignore Ngāti Hikairo within its rohe.

1.3 Ngāti Hikairo te Iwi

He koutu whenua e kore e taea te parepare

He koutu tangata ka taea te parepare

Kōtahi kei Kāwhia ko Whakatau anake ²

9. The traditions of Ngāti Hikairo are set out in detail in the Oral and Traditional History report, *Te Maru-ō-Hikairo* and we do not seek to repeat them here.³ We simply note that the customary group covered by the submissions include “*ngā uri whakatupu o Ngāti Hikairo*” and that a key ancestor of the iwi is Rakataura III (Rakataura-a-Tokohei), a direct descendant, of Rakataura II (Rakamaomao), and in turn Rakataura I, the son of Whakatau.⁴
10. Ngāti Hikairo can be described as an iwi that straddles a small buffer region between the larger Ngāti Maniapoto and Waikato iwi. Ngāti Hikairo is closely affiliated to both its larger neighbours.
11. The principal hapū of Ngāti Hikairo are:
 - i. Te Whānau Pani;
 - ii. Ngāti Te Uru;
 - iii. Ngā Uri-o-Te Makaho;
 - iv. Ngāti Horotakere;
 - v. Ngāti Puhiaawe;
 - vi. Ngāti Wai;
 - vii. Te Matewai;
 - viii. Ngāti Parehinga;
 - ix. Ngāti Purapura;
 - x. Ngāti Pare;
 - xi. Ngāti Hineue;
 - xii. Ngāti Whatitiri;
 - xiii. Ngāti Rāhui;

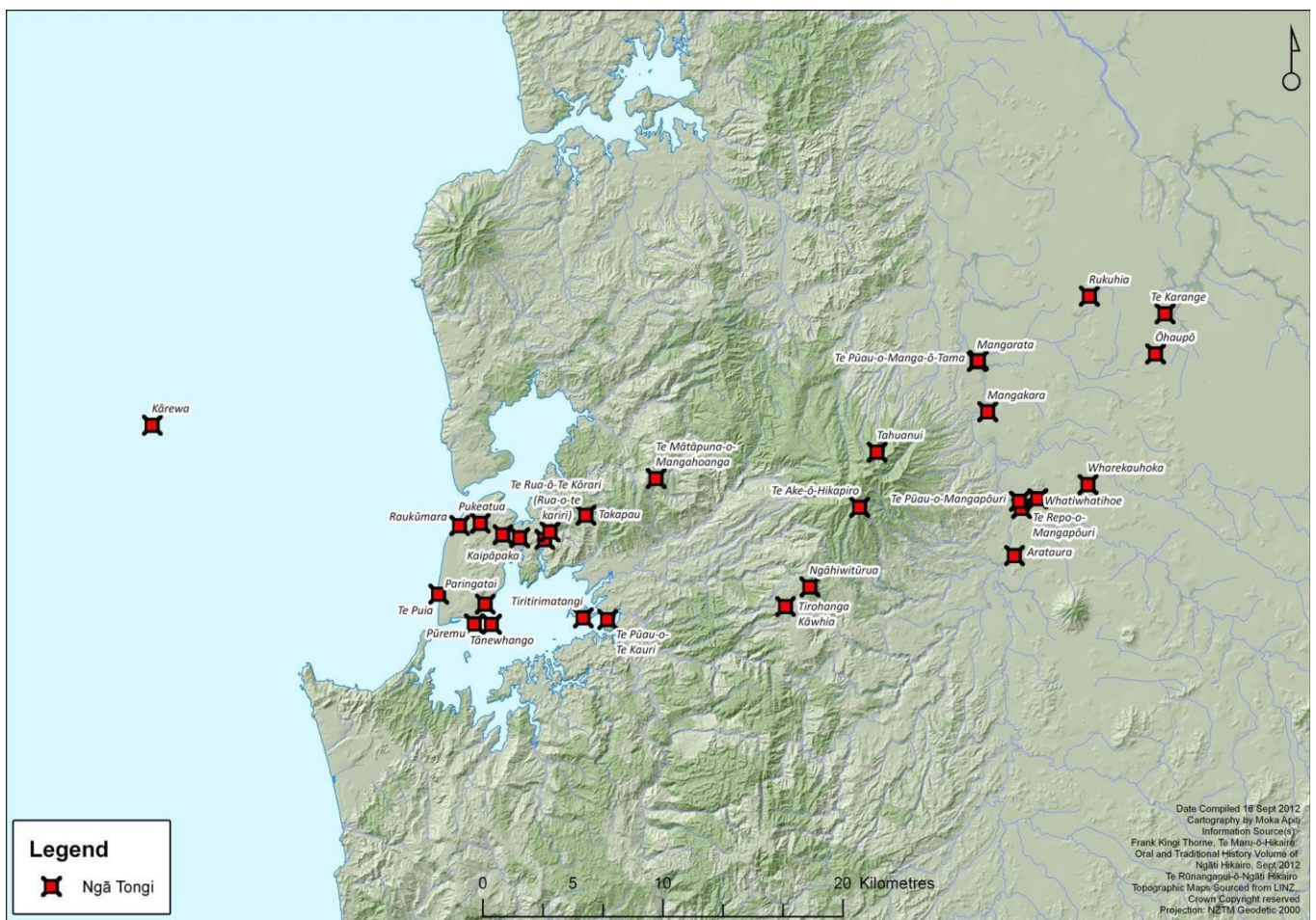
² From the Wai 1113 Statement of Claim: This whakatauki is ancient and refers to the immovable and resolute nature of Whakatau the father of Rakataura I, the tohunga of Tainui Waka. Ngāti Hikairo strongly associate with this whakatauki as it best describes our independence, character and perservance to defend our mana against all odds

³ #A98

⁴ #A98

- xiv. Ngāti Te Mihinga;
- xv. Ngāti Pōkaia;
- xvi. Ngāti Te Rahopupūwai;
- xvii. Ngāti Ngāti;
- xviii. Te Whānau-o-Te Ake;
- xix. Ngāti Paretaiko;
- xx. Ngāti Waikaha;
- xxi. Ngāti Huritake; and
- xxii. Ngāti Taiuru.

12. The customary rohe of Ngāti Hikairo is broadly indicated by the Tongi of the iwi as set out in the map below.



1.4 The Claims

13. These closing submissions consolidate the closing submissions for the Wai 1112, Wai 1113, Wai 2351, Wai 2353, and Wai 1439 claims. The following claims fall within the umbrella of the Ngāti Hikairo iwi claims or are adopted to support the iwi claims.

Wai 1112 and Wai 1113 Ngāti Hikairo Iwi Claims

14. By way of reminder, we repeat the opening submissions on the claims. The Wai 1112 and Wai 1113 claims are made for Te Rūnanganui o Ngāti Hikairo for the benefit of Ngāti Hikairo iwi. The principal focus of the Wai 1112 claim is the waterways and moana including their resources and waters. The Wai 1113 claim covers political, land loss and other issues.

Wai 2353

15. This claim by Hinga Whiu is made for herself and the Hōnerau Tai Hauāuru Whānau Trust. The claim focuses on the Ōpārau region and in particular the takings of land for the Ōpārau School.

Wai 1439

16. This claim by John Pouwhare is made for the benefit of the trustees and beneficiaries of the Ōpārau No 1 block. It focuses on the Crown's Treaty breaches in relation to the Ōpārau Land Development Scheme.

Wai 2351

17. This is a claim by Frank Thorne in relation to Raupatu and confiscation of Ngāti Hikairo lands within the Waikato confiscation.

Wai 2352

18. This is a whānau claim by Phillipa Barton. Her claim focuses on particular Crown Treaty breaches related to the Kāwhia G2, M1, P, R, S, and T blocks. The closing submissions for this claim are filed separately. Her

claim is a whānau claim that stands in its own right, but also serves as a detailed case study for the Ngāti Hikairo claims.

1.5 The Evidence of Ngāti Hikairo

19. The various evidence of the Ngāti Hikairo iwi was presented in three hearing weeks and a Ngā Kōrero Tuku Iho hearing at Waipapa marae. A key document is *Te Maru-ō-Hikairo* the Ngāti Hikairo oral and traditional history report referred to above.⁵
20. The initial hearings opened on the kaupapa of Te Pitihana (Te Ōhākī Tapu), and Ngāti Hikairo presented evidence as one of the five iwi of that sacred compact. The evidence of December 2012 was:
 - Meto Hopa, #I3
 - Frank Thorne, #I11
 - Tom Moke, #I3.
21. The iwi then presented evidence at the third hearing week in April 2013 for the Wai 2351 claim by Frank Thorne on Raupatu:
 - Louvaine Kaumoana, #K10
 - Mac Bell, #K11
 - Meto Hopa, #K12
 - Jack Cunningham, Meto Hopa, and Frank Thorne, #K30, #K31
 - Frank Thorne, #K32
22. The Ngāti Hikairo hearing week was held at Waipapa marae in October 2013 and the following evidence was prepared:
 - Meto Hopa, #N9(b)
 - Frank Thorne, #A98, #N51, #N53
 - Mana Forbes, #N31
 - Te Kore Ratu, #N11
 - Pipi Barton, #N4 (for Wai 2352)
 - John Pouwhare, #N34 (for Wai 1439)
 - Albert Kewene, #N33 (for Wai 1439)
 - Barbara Moke, #N35 (for Wai 1439)
 - Te Aroha Apirana, #N40 (for the Wai 1437 claim)
 - Tame Pōkaia, #N36
 - Jack Cunningham, #N38
 - Pipi Barton, #N39, #N39(b)
 - Mere Roberts, #N47
 - Whetu Simon and Gerrit Vantol, #N48

⁵ #A98

- Kingi Pōrima, #N29
- Mere Gilmore, #N16
- Raymond Tooman, #N32
- Roimata Pikia, #N10
- Hano Ormsby, #N30
- Hinga Whiu, #N17
- Dr John Burton, #N19
- Venus Daniels, #N13
- Amiria Ratu-Le Bas, #N12
- Gareth Seymour, #N46
- Tom Moke, #N37
- Tony Spelman, #N18

1.6 Adoption of other claims and submissions

23. These submissions adopt the generic submissions of claimant counsel in full including all answers to the Waitangi Tribunal's Statement of Issues.
24. Counsel also adopt the submissions of the Wai 2352 as a detailed case study of the impacts of Crown Treaty breaches on a Ngāti Hikairo whānau in Kāwhia. Further, the submissions of the Wai 1437 claim are adopted as an example of a non-“Raupatu” claim of a Ngāti Hikairo descendant.
25. Counsel attach as an appendix our answers to the Waitangi Tribunal's Statement of Issues as they specifically relate to Ngāti Hikairo.

1.7 These closing submissions follow the themes set by Ngāti Hikairo for their hearing at Waipapa marae

26. These submissions now deal with the themes of the Ngāti Hikairo claims as laid down at Waipapa marae by the iwi. Counsel have attempted to follow those themes in the order progressed by the iwi and cover the allegations within the Statements of Claim of Wai 1112, Wai 1113, Wai 2351, Wai 2353, and Wai 1439 under those themes.

2. Failure to protect the Ngāti Hikairo landbase

2.1 Introduction

27. In this section we outline the evidence of Ngāti Hikairo land loss. One of the most important claims for Ngāti Hikairo is that the “*Crown failed to prevent, rectify, or remedy the rapid alienation of Ngāti Hikairo lands so that the remaining land in iwi ownership is insufficient for the present and future needs of Ngāti Hikairo*”.⁶ It is submitted that the Crown’s failure to protect the landbase of the iwi has marginalized the collective force and economic capacity of the iwi, but also of the hapū and whānau of Ngāti Hikairo.
28. Ngāti Hikairo asserts customary interests within the lands set out in Appendix A to the Statement of Claim. This approximate area of core traditional lands is reproduced above at page 6.⁷

2.2 Overview of land loss

29. The loss of most of the Ngāti Hikairo lands occurred in two ways. The first, and perhaps most substantial loss, was experienced through the confiscation following the wars. The second largest loss occurred in a series of Crown purchases in the Pirongia West block between 1895 and 1912.
30. The confiscation, while not covered in this submission, adds vital context to the claims within this inquiry. It is submitted that the Tribunal should be aware that the iwi lost over half of its lands through the confiscation. This made the subsequent losses even more serious and compounded impacts over time. Also, due to the shape of the iwi rohe Ngāti Hikairo was effectively forced to become focused around the Kāwhia harbour lands and

⁶ Wai 1113 Amended Statement of Claim, 14 December 2011, p39

⁷ Ngāti Hikairo mapbook, #N61, plate 4

became more and more removed from their lands around the Ngāroto, Waipā, and Pirongia regions.

31. An overview of the land loss data was provided in the evidence of Mr Thorne. He noted that:

“In total, Ngāti Hikairo considers it has lost about 109,000 acres (68,000 in confiscation district and about 41,000 acres outside the confiscation district) out of a total iwi land area of about 120,000 acres – a loss of over 90% of our customary lands”.⁸

32. The overall figures provided by the iwi are as follows:

| Area | Overall rohe | Acres Remaining | Acres Lost |
|----------------------|----------------|-----------------|----------------|
| Raupatu Area | 68,370 | 97 | 68,273 |
| Outside Raupatu Area | 51,277 | 10,334 | 40,943 |
| Totals | 119,647 | 10,431 | 109,216 |

33. The Ngāti Hikairo evidence is that nearly all the Māori Freehold land that does remain in their rohe is held in individualized title (individual shares within multiply-owned blocks) and is not held collectively by the iwi or even by the hapū.⁹
34. In the following we break down some of the overview data on the land losses of Ngāti Hikairo.

2.2.1 Inside the confiscation district

35. Below is a table showing the area of customary land of Ngāti Hikairo in each Parish block within the Rohe Pōtae Inquiry district extension area and the amount of land remaining today (in acres). Of course the bulk of the lands were lost to confiscation, but some lands were “returned” and then subsequently lost again. We discuss the nature of the loss of the “returned” lands within the “non-Raupatu” claims section.

⁸ Thorne, #N53, p8

⁹ Thorne, #N53, p3

2.2.2 Land outside the Confiscation District

37. Ngāti Hikairo estimates that the iwi has lost about 80% of their customary lands located outside the confiscation district. The following is an approximate estimate to give a general indication of land loss and does not cover those lands that were the subject of tuku with other iwi.¹²

| Block | Area | Remaining land | Land Lost |
|---------------|---------------|-----------------|---------------|
| Pouewe Block | 44 | 0 | 44 |
| Kāwhia | 5,373 | 2,456 | 2917 |
| Pirongia West | 36,289 | 5,944 | 30345 |
| Motukōtuku | 198 | 0 | 198 |
| Waihohonu | 1,093 | 0 ¹³ | 1093 |
| Mangawhero | 26 | 0 | 26 |
| Mangaora | 799 | 797 | 2 |
| Kaipiha | 1,977 | 285 | 1692 |
| Mangauika | 5,473 | 847 | 4626 |
| Kārewa Island | 5 | 5 | 0 |
| Totals | 51,277 | 10,334 | 40,943 |

38. The iwi interests in lands outside the confiscation district, and the types of losses of those lands, are approximately 51,000 acres as follows (figures are in acres):¹⁴

¹² Based upon the report by Douglas *et al*, #A21; In relation to tuku whenua, Ngāti Hikairo traditions are that the Mangaora block was awarded to Ngāti Apakura in 1889 by the Native Land Court on the basis of a tuku from Ngāti Hikairo. In addition, Kaipiha was awarded to the Turner whānau of Ngāti Taramatau, a hapū of Ngāti Pou, based on a tuku from Ngāti Hikairo (#A98, p187)

¹³ There may well have been “Europeanisation” of lots within the Waihohonu Block, Berghan, #A60, pp 1169-70 lists as “European” Waihohonu 6, 12, & Roads blocks (a total of 130 acres)

¹⁴ Thorne, #N53(d)

| Block | Area (acres) | Crown purchase | Private purchase | Europeanised | Public Works | Other | Remaining | Source |
|---------------|------------------|----------------|------------------|--------------|--------------|-----------|--------------|---------------------------------------|
| Pouewe Block | 44 ¹⁵ | 0 | 44 ¹⁶ | 0 | 0 | 0 | 0 | #A21, p119 |
| Kāwhia | 5,373 | 1,394 | 862 | 649 | 2 | 10 | 2,456 | #A21, p115 |
| Pirongia West | 36,289 | 26,081 | 3,670 | 594 | 0 | 0 | 5,944 | #A21, p119 |
| Motukotuku | 198 | 0 | 128 | 65 | 0 | 0 | 0 | #A21, p118 |
| Waihohonu | 1,093 | 0 | 1,093 | | | | 0 | #A60, pp 1169-1170; Māori Land Online |
| Mangawhero | 26 | 0 | 26 | 0 | 0 | 0 | 0 | #A21, p117 |
| Mangaora | 799 | 0 | 2 | 0 | 0 | 0 | 797 | #A21, p117 |
| Kaipihā | 1,977 | 0 | 1,375 | 317 | 0 | 0 | 285 | #A21, p115 |
| Mangauika | 5,473 | 3,938 | 588 | 100 | 0 | 0 | 847 | #A21, p117 |
| Kārewa Island | 5 | 0 | 0 | 0 | 0 | 0 | 5 | #A21, p115 |
| Totals | 51277 | 31413 | 7788 | 1725 | 2 | 10 | 10334 | |

39. It should be noted that the bulk of the lands were lost to Crown purchases in the Pirongia West block. The most significant sales in the Pirongia West block occurred between 1898 and 1920.¹⁷ The technical evidence was that between 1895 and 1900 around 63% of the Pirongia West block was alienated to the Crown.¹⁸ In addition, over the period 1894 to 1910 about 59% of the Maungauika block was also alienated by Crown purchases (3,226 acres of 5,473).¹⁹ It is also noted that these Pirongia West and Mangauika lands were in the region closest to Pirongia Maunga and the confiscated lands. It is submitted that in fact this further concentrated

¹⁵ Boulton #A70, p133

¹⁶ Douglas and others #A21, p119 (they use the figure 46 acres)

¹⁷ Thorne, #N53(b), Appendices N1-N3

¹⁸ *Te Maru-ō-Hikairo*, #A98, pp177-180

¹⁹ Douglas *et al*, #A21, Appendix 7, Mangauika Blocks

Ngāti Hikairo in their lands around Kāwhia harbour.

40. Indeed, census data from 1874 demonstrates a population of Ngāti Hikairo in the Waipā and Whatiwhatihoe, but with the loss of these lands the people would have re-located.²⁰
41. It is submitted that the Crown was on notice from an early period that Ngāti Hikairo may have insufficient lands for their needs. During an application before the Native Land Court on 21 July 1897 the Court stated that it knew that the Kāwhia lands were insufficient to support the people who own them and the Pirongia lands, if sold, would leave the Ngāti Hikairo tribe without sufficient land.²¹ The sale nevertheless proceeded.

2.3 Conclusions

42. It is submitted that the confiscation in Waikato divided the rohe of Ngāti Hikairo in two and halved the iwi's lands. Then in the period 1895 to about 1910 the iwi rohe was again divided by a series of Crown purchases in the Pirongia West and Mangauika blocks. Again, the rohe was halved leaving Ngāti Hikairo with about a quarter of their original customary lands. Their remaining lands were largely around Kāwhia. These Crown purchases not only separated Ngāti Hikairo from their lands to the east, but also removed the Pirongia maunga from the iwi's control.²²
43. The evidence of Ngāti Hikairo is that the iwi has lost about 109,000 acres (68,000 in confiscation district and about 41,000 acres outside the confiscation district) out of a total iwi land area of about 120,000 acres. Today, Ngāti Hikairo says that the iwi, the hapū and the whānau do not have enough land for their present and future needs. The evidence before this Tribunal is that the land is vitally important to Ngāti Hikairo:²³

"I strongly believe that the loss of our lands is a fundamental claim of our iwi. The land is a source for tribal kōrero and tikanga. The land is vital to

²⁰ Douglas *et al*, #A21, Appendix 7, Mangauika Blocks

²¹ Thorne, #N53, p8

²² *Te Maru-ō-Hikairo*, #A98, p57

²³ Thorne, #N53, p10

our well-being spiritually and culturally and as an economic base to feed and provide for our people”.

44. The Ngāti Hikairo Oral and Traditional History report describes the impacts of individualization of title, but also of the impact of land loss that focused the iwi in more concentrated locales:²⁴

“They were forced to utilise small, often infertile lands, year in and year out, draining the qualities from the land. The change from numerous, large, geographically scattered māra, to one or two small māra in the same area, meant that when a bad season occurred, or an occurrence of localised blight, instead of being able to relocate to more productive, unaffected māra, the whānau suffered from poverty, malnutrition, near starvation, and just as importantly, a lack of independence and ability to provide for their own welfare”.

²⁴ Te Maru-ō-Hikairo, #A98, p299

3. Land Issues

3.1 Raupatu

45. This part of the closing submissions addresses the Wai 2351 claim by Frank Thorne. His claim is a raupatu claim for the benefit of Ngāti Hikairo. Evidence for the claim was presented during the Raupatu hearing week in April 2013.
46. The Wai 2351 claimant has attended a number of hui-a-lwi for Ngāti Hikairo where the matter of the raupatu claims has been discussed. He has come to the view that the iwi does not seek findings or recommendations from this Tribunal in relation the Ngāti Hikairo raupatu claims. Counsel is instructed not to seek findings or recommendations from this Tribunal in relation to the Wai 2351 claim during this inquiry.
47. The Wai 2351 claimant has not taken this view because of the Waikato Raupatu settlement and out of any acceptance that Ngāti Hikairo is a hapū of “Waikato”, but rather a desire of Ngāti Hikairo to keep good relations with its huānga in Waikato (and also with whanaunga within Ngāti Maniapoto) while the whole issue of the Treaty settlement negotiations about the Kāwhia harbour claims is discussed between all parties. The claimant also recognises that Ngāti Hikairo marae and persons do benefit from the Waikato Raupatu settlement.
48. This position is also not an acceptance that Ngāti Hikairo are unable to bring “raupatu” claims by virtue of the Waikato Raupatu Claims Settlement Act 1995. The iwi continue to assert that they have a distinctive line of whakapapa that is not “Waikato” in terms of that Act. They have given evidence on the distinctive whakapapa lines of Ngāti Hikairo as follows .²⁵

“A key ancestor of the iwi from whom all hapū of Ngāti Hikairo descend is Rakataura III (Rakataura-a-Tokohei). This tupuna is the source of the primary and distinctive affiliation of Ngāti Hikairo iwi. This is a distinct and key line for Ngāti Hikairo that defines our iwi in relation to other iwi and in particular to Waikato hapū.”

²⁵ Thorne, #K32, p3

49. So the decision not to progress at this stage is a pragmatic one. Nevertheless it is submitted that there are good reasons why the hearing of the Ngāti Hikairo evidence on Raupatu was of use and is of benefit to the Tribunal and to the claimant community:

- a. The hearing of the claims was a significant release of *mamae* for the Ngāti Hikairo iwi. The preamble to Treaty of Waitangi Act 1975 refers to the “*practical application*” of the Treaty, and it is submitted that by having heard the evidence of Ngāti Hikairo for the Wai 2351 claim the Tribunal has assisted the claimants in a practical manner, sometimes described as an act of therapeutic jurisprudence. Further, the presentation of case has created a record for the future, particularly in the context that one of the witnesses who gave evidence has already passed on;
- b. The hearing has provided evidence that is likely to be of use to other claimants in this inquiry. Ngāti Hikairo has given specific *kōrero* on such battles as Te Rore and, Waiari and the role of Māori such as Ngātūerua Erueti²⁶ (and the waiata *E pā tō Hau*) and Hōne Te One²⁷ during the conflicts;
- c. The evidence provides vital context to the claims of Ngāti Hikairo within this inquiry district including context:
 - i. At a macro-level in relation to impacts of land loss subsequent to the raupatu and the overall impact upon the rohe of Ngāti Hikairo,
 - ii. In terms of the relationships after the wars among the various rangatira of the Kīngitanga and within the Rangatira of te Ōhākī Tapu/Te Pitihana, including assisting to explain their actions and the responses of others,
 - iii. In relation to the non-“raupatu” claims of the iwi within the confiscation district, and

²⁶ Hopa, #K12; and Thorne and Hopa, #K12(a)

²⁷ Bell, #K11

- iv. In relation to other claim issues within the confiscation district such as resource management issues and the preservation of wāhi tapu.

3.1.1 Overview for the purposes of context

50. Counsel now turn to a quick overview of the Ngāti Hikairo evidence in relation to the wars and confiscation.
51. The Ngāti Hikairo evidence on raupatu was that iwi members participated in the wars in Taranaki and also in the Waikato region specially at Rangiriri, Te Rore, Pikopiko (Puketoki), Pāterangi, Waiari, and Hairini and Ngāti Hikairo were present at Rangiaowhia.²⁸ The evidence highlighted the loss of Ngāti Hikairo life and property, but also the building of redoubts by the Crown forces on Ngāti Hikairo pā and wāhi tapu.²⁹
52. While the technical evidence did not highlight any battles at Te Rore,³⁰ the tangata whenua evidence described various “*notable skirmishes*” in that settlement.³¹ Te Rore had been an important trading settlement for Ngāti Hikairo and there was a tavern and homestead of JV Cowell there.³²
53. The fighting at Waiari was significant for Ngāti Hikairo as a number of the male fighting force was lost there and as a consequence the iwi caused less of an influence in the subsequent battles.³³ O'Malley compares the Māori losses at Waiari with those of Rangiriri.³⁴
54. The evidence of Ngāti Hikairo in relation to Rangiaowhia demonstrated the complex nature of political issues at the time. On one hand the technical evidence described the march of the Crown forces to Rangiaowhia with the assistance of Māori guides James Edwards and John Gage before an armed raid on a defenceless village.³⁵ On the other hand, the Ngāti

²⁸ Thorne, #K32, p6; Bell, #K11, pp 3-4, 6-7

²⁹ *Te Maru-o-Hikairo*, #A98, p177; Thorne, #K32; Bell, #K11

³⁰ O'Malley, #A22, p102

³¹ Thorne, #K32, p18

³² Thorne, #K32, p17

³³ Thorne, #K32, p22

³⁴ O'Malley, #A22, p105

³⁵ O'Malley, #A22, pp 107, 120

Hikairo evidence highlighted that the iwi had persons at Rangiaowhia and in particular the whānau of Ngātūerua Erueti (James Edwards) were at Rangiaowhia.³⁶

55. A Crown proclamation of 1879 listed the tribes who “been in rebellion” and the list included Ngāti Hikairo.³⁷

56. Following the wars Ngāti Hikairo in the Waipā region turned their focus to their kāinga at Whatiwhatihoe and there was an invitation for Hōne Te One to Tawhiao and Kīngitanga to live there.³⁸

57. A strong theme to the Ngāti Hikairo evidence on the war period was the complexity of the politics on the ground. Ngāti Hikairo have been described as “rebels” and “loyalists”, but the difference and position is simply not clear cut.³⁹ One witness stated:⁴⁰

“[It is] very difficult to describe in simple terms the position of Ngāti Hikairo during the wars. It is far too complex for that. I can say that the pressures somewhat divided our iwi and factions lent support for the Crown and factions fought against the Crown”.

58. So it is submitted that it is difficult to apply terms to describe Ngāti Hikairo, or any particular individual’s, position at that time. For example, Hōne Te One fought in Taranaki but was later exiled from Kāwhia as a Crown supporter. Then he was later a supporter of the Kīngitanga. Ngāti Hikairo described some of the people as “neutral” and who sought to broker peace. Also the example of Pohepohe was poignant. Pohepohe fought one of the Crown’s forces, McGruther, at Taranaki, but later this same McGruther was married to Pohepohe’s daughter. Mr Bell described this as going from “*deadly foe to a father-in-law*”.⁴¹

59. As set out in the section of overall land loss, the confiscation in Waikato took about half of the lands of Ngāti Hikairo and being about 68,000 acres of land.

³⁶ Thorne, #K32, p23

³⁷ O’Malley, #A22, p580

³⁸ Thorne, #K32, p28

³⁹ Bell, #K11, p9

⁴⁰ Thorne, #K32, p5

⁴¹ Bell, #K11, pp 12-14

3.2 Non-“Raupatu” claims within the Waikato Claim area

60. This section covers those Ngāti Hikairo claims that do not arise out of, or relate to, the confiscation of land within the Waikato confiscation district.
61. The focus therefore is on the loss of lands that had been “returned” through the Compensation Court process to Ngāti Hikairo persons. These losses are all private and Crown purchases.
62. The non-“Raupatu” claims also include the loss of the Whatiwhatihoe kāinga and the Mātakitaki Pā.

3.2.1 Context – Compensation Court Awards

63. The Rūnanga o Ngāti Hikairo was represented by about 13 members in 1865 when it was applying to the Compensation Court for the return of lands within the Confiscation District. The applications were for the land to be returned as a collective. Several of the applications and letters state the application and the land is for the collective “me Ngāti Hikairo katoa”.⁴²
64. The initial returns and maps indicated that the land was going to be awarded to the collective “Ngātihikairo” iwi, however the final lands that were “Returned” were in individual title.⁴³
65. Ngāti Hikairo has identified the following Crown awards made to Ngāti Hikairo individuals within the extension area:⁴⁴

⁴² Cunningham, Hopa, and Thorne, #K30, p6

⁴³ Innes, #A30, pp 80-97;

⁴⁴ From Cunningham, Hopa, and Thorne, #K30, pp 12-13 citing 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. There was a significant award of 2000 or so acres in the Te Rore and Harapepe areas to Ngāti Hikairo people, but none remain in the ownership of Ngāti Hikairo today, #K31, p7

| Parish | Lot | Area | Grantee |
|----------------------------|----------------------------|-----------------|--|
| Mangapiko | 323 | 10.37 | Hōne Kaora (John Cowell) from Hōne Te One |
| Pirongia | 305 | 409.23 | Matilda Morgan (Matire Te Rāangi) |
| “ | 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 |
| 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 | Hone 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 |
| 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 |
| Pūniu Parish | 341 | 49.91 | Hōne Te One |
| Total | | 6,157.73 | |

Table: Crown Grants to Ngāti Hikairo individuals in the inquiry extension area

66. Nearly all of the Ngāti Hikairo grantees were the Runanga members and their immediate families.⁴⁵
67. On the whole, the lands awarded by the Crown to Māori were of poor quality. The evidence before this Tribunal was as follows:
- i. The majority of the awarded of lands “Returned” to Ngāti Hikairo individuals were within the southern Pirongia parish and within the area of least suitability for development and with most remaining forest.⁴⁶
 - ii. The lands did however contain parts of Pirongia maunga, Mātakitaki Pā, and Whatiwhatihoe marae.⁴⁷
 - iii. There were few awards in the Townships. Only about 0.76% of the Alexandra East Township land was granted to Māori.⁴⁸ Only about 1.67% of the Alexandra West Township land was granted to Māori.⁴⁹
 - iv. The “Returned” lands were often surrounded by paper roads that were never actually formed.⁵⁰

3.2.2 The Subsequent Losses of the “Returned” Lands

68. The key non-“Raupatu” Ngāti Hikairo claim is that the Crown failed to ensure Ngāti Hikairo retained enough of their “returned” lands following the confiscation. None of the lands “Returned” to Ngāti Hikairo individuals were given any restrictions against alienation.⁵¹
69. Ngāti Hikairo estimates that the iwi has lost about 99.9% of their land inside the extension area of this Inquiry District as follows:⁵²

⁴⁵ Cunningham, Hopa, and Thorne, #K30, p6

⁴⁶ Innes, #A30, pp 49, 193; Transcript of Raupatu hearings, April 2013, #4.1.10, p1184

⁴⁷ Cunningham, Hopa, and Thorne, #K30, p15

⁴⁸ Innes, #A30, p127

⁴⁹ Innes, #A30, p145

⁵⁰ Innes, #A30, pp 192, 193

⁵¹ Boulton, #A67, p35

⁵² Innes, #A30, p285; The 2000 acres or so awarded to Ngāti Hikairo in the Te Rore and Harapepe areas (outside the confiscation district) has all been alienated, #K31, p7

| Block | Area | Remaining | Land Lost |
|-----------------------------|---------------|-----------|---------------|
| Pirongia Parish | 26,175 | 95 | 26,080 |
| Ngaroto Parish | 21,572 | 0 | 21,572 |
| Mangapiko Parish | 18,968 | 0 | 18,968 |
| Township lots ⁵³ | 1,655 | 2 | 1,653 |
| Totals | 68,370 | 97 | 68,273 |

70. It is submitted that today, Ngāti Hikairo only has 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. None are occupied by Ngāti Hikairo.⁵⁴
71. The evidence shows that the majority of the “returned” lands were lost to private purchases in a relatively short period after the awards in the 1870s through to 1930 (around 91% were alienated by that date).⁵⁵ Mr Innes agreed under cross-examination that a good proportion of the private purchases occurred in the period after the wars when there was likely a great need among Māori.⁵⁶ Indeed the Ngāti Hikairo report, *Te Maru-ō-Hikairo*, noted that newspaper reports of that period highlighted the difficulties of providing for the masses who lived at Whatiwhatihoe.⁵⁷
72. As noted above, the majority of the “returned” lands were alienated by private purchases. The mode of land loss for all of the land awarded to Māori, alongside the remaining lands of Ngāti Hikairo within the extension area (figures in acres):⁵⁸

⁵³ Alexandra East and Alexandra West combined

⁵⁴ Cunningham, Hopa, Thorne, #K31, p6; Innes, #A30

⁵⁵ Innes, #A30, p250; Boulton, #A67, pp 35, 194

⁵⁶ Transcript of Raupatu hearings, April 2013, #4.1.10, p1192

⁵⁷ *Te Maru-ō-Hikairo*, #A98, p181

⁵⁸ Innes, #A30, p285

| Block | Total Area | Crown purchase from total awards | Private purchase from total awards | Other | Remaining for Ngāti Hikairo |
|---------------------|------------|----------------------------------|------------------------------------|-------|-----------------------------|
| Pirongia Parish | 26,175 | 643 | 4,345 | 4 | 95 |
| Ngāroto Parish | 21,572 | 0 | 1,338 | 0 | 0 |
| Mangapiko Parish | 18,968 | 0 | 450 | 0 | 0 |
| Alexandra Townships | 1,655 | 3 | 13 | 1 | 1.5 |

73. In relation to the alienations to the Crown, a significant portion of Ngāti Hikairo “Returned” lands awarded on the slopes of Pirongia Maunga were put into a scenic reserve for conservation purposes and presently form the bulk of the Pirongia Forest Park.⁵⁹
74. Mr Innes noted that one person, Mr William Aitken, purchased nearly 22 percent of the Māori awards by acreage.⁶⁰ Under cross-examination Mr Innes accepted that Mr William Aitken was a land speculator from Auckland who worked closely with a team of well known land speculators including Thomas Russell and Frederick Whittaker.⁶¹ In addition, it was noted that some of the awards of “Returned” lands appear to “ante-vested” to 13 March 1867 possibly to validate a pre-existing alienation.⁶² 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 1867.⁶³ 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 1867.⁶⁴ 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 1867.⁶⁵

⁵⁹ Innes, #A30, pp 80-97

⁶⁰ Innes, #A30, p261

⁶¹ Transcript of Raupatu hearings, April 2013, #4.1.10, pp 1196, 1203-4

⁶² #A21; Innes, #A30, p13

⁶³ #A21; Innes, #A30, p36

⁶⁴ #A21; Innes, #A30, p36

⁶⁵ #A21; Innes, #A30, p36

75. The Lot 329 referred to above was part of Whatiwhatihoe kāinga. This most important site is discussed in a separate section below. At this juncture we simply note that the confiscation divided the kāinga in half and that the approximately 200 acres that were awarded to Ngāti Hikairo within the confiscation district have now been alienated.

3.2.3 The loss of Mātakitaki Pā

76. An important claim for Ngāti Hikairo within the confiscation district is the loss of Mātakitaki Pā. The Wai 1113 claim alleges that the Crown has failed to protect Ngāti Hikairo's ownership of Mātakitaki Pā or to properly recognise and provide for the importance of the Pā to Ngāti Hikairo.
77. The Mātakitaki Pā was the home, or capital centre, of Ngāti Hikairo. It was the site of a significant battle in 1822.⁶⁶ Mātakitaki is the western section of three Pā that make up Mātakitaki Pā. The other two are Taurakohia and Puketutu.⁶⁷
78. Part of Mātakitaki Pā was included within Lot 323, of 10.37 acres, awarded on 2 July 1868 to Hōne Te One through the Compensation Court process. The grant was not subject to restrictions on alienation. Hōne Te One transferred the property to his tamaiti whāngai, Hōne Kaora. According to Mr Innes, Kaora in turn conveyed the land to a European on 21 December 1891.⁶⁸ Ngāti Hikairo refuted this evidence as the whole purpose for Hōne Te One receiving the land was to protect it and because the whānau kōrero is that the land was never sold.⁶⁹
79. The Crown acquired the land from the European under The Public Reserves, Domains & National Parks Act 1928 as part of the Pirongia Domain on 10 July 1931. The land is presently classified as a reserve under the Reserves Act 1977 and is managed by the Waipā District Council. The land was later subject to Section 11 of the Waikato Raupatu Claims Settlement Act 1995 *'which provides for residual Crown Land to be*

⁶⁶ *Te Maru-ō-Hikairo*, #A98, p206

⁶⁷ *Te Maru-ō-Hikairo*, #A98, p206; Thorne, #N51, p11

⁶⁸ Innes, #A30, pp 31-32

⁶⁹ Thorne, #N51, pp 12-13

*offered for purchase to a land holding trust for Waikato in certain circumstances’.*⁷⁰

80. The Council’s Management Plan for the Mātakitaki Pā was completed without engagement with Ngāti Hikairo. Part of the site is leased by a farmer. Thus the site is continually the subject of poor management and consultation as it faces damage from farming practice. The iwi seeks the return of the land.⁷¹

3.2.4 Conclusion

81. The non-“raupatu” claims of Ngāti Hikairo allege that the lands that were awarded to the iwi were quickly alienated, largely through private purchases. It is submitted that the evidence suggests that these alienations occurred in a time of great need among the iwi in the periods following the wars. The evidence appears clear that at least 22 percent of the private transactions were made by one land speculator, Mr William Aitken.
82. In a relatively short period, most of the approximately 6,157 acres of awards within the extension area of this inquiry were alienated, leaving a mere 97 acres in Māori ownership today. The evidence is that none of these remaining lands are occupied, the bulk of them being located in the vicinity of the Pirongia Forest Park. The lands that contain the important Ngāti Hikairo site, Mātakitaki Pā have also been alienated and are now within a local body reserve.
83. The awards included about 200 acres of Whatiwhatihoe. This kāinga was divided by the confiscation line. These award lands were also alienated at a relatively quick pace, but two urupā remain which are under the administration of the Department of Conservation. Ngāti Hikairo seeks the return of these urupā and also the Mātakitaki Pā site.

⁷⁰ Innes, #A30, pp 31-32

⁷¹ Thorne, #N51, p13

3.3 loss of Whatiwhatihoe Marae

3.3.1 Introduction

*Whatiwhatihoe is an area of extreme significance for Ngāti Hikairo*⁷²

84. Whatiwhatihoe is described in detail in *Te Maru-ō-Hikairo*,⁷³ so this part of the submissions focuses on the claims of land loss and management issues surrounding Whatiwhatihoe.
85. The nub of the claims is that this important kāinga has been lost and Ngāti Hikairo concerns about the site seem ignored in local body management. Two urupā from the site remain and are poorly administered by the Department of Conservation.
86. Whatiwhatihoe is not simply one kāinga, rather it is an extensive area of about 600 acres which incorporates several kāinga, pā, and urupā. Included within are: Te Pae-o-Ruahinerua (Ruahine), Haowhenua, Patatūtahi, Taumata Kanohi, Toroakapakapa, Mangauika, and others.⁷⁴
87. Whatiwhatihoe is well located with close access to the Mangauika and Waipā tuna fisheries, the productive cultivation lands of the region, Piriongia maunga, and the Waipā awa for transport by waka.⁷⁵
88. Ngāti Hikairo have given evidence also that Matire Morgan, Rore Tūteke, Te Au and others of the iwi were living at Whatiwhatihoe prior to the Land Wars.⁷⁶
89. The Ngāti Hikairo rangatira, Pīkia, occupied Whatiwhatihoe and his whare was called Te Tokanganui-ā-Noho.⁷⁷ The Ngāti Hikairo rangatira, Hōne Te One, Pīkia, Hōne Wetere, and Te Tāpīhana invited Kīngi Tāwhiao to occupy the lands at Whatiwhatihoe following the wars in 1871-72.⁷⁸

⁷² *Te Maru-ō-Hikairo*, #A98, p192

⁷³ *Te Maru-ō-Hikairo*, #A98, pp 192-202

⁷⁴ *Te Maru-ō-Hikairo*, #A98, pp 192-202

⁷⁵ *Te Maru-ō-Hikairo*, #A98, p193

⁷⁶ *Te Maru-ō-Hikairo*, #A98, pp 192, 332

⁷⁷ *Te Maru-ō-Hikairo*, #A98, p 194

⁷⁸ *Te Maru-ō-Hikairo*, #A98, p335; Thorne, #111, p17

90. Whatiwhatihoe marae became the political base for Tāwhiao from about 1882, his where there was called Whakararuraru.⁷⁹

3.3.2 The Overall loss of lands at Whatiwhatihoe

91. Whatiwhatihoe covers about 600 acres on the arable flat lands along the Western banks of the Waipa and up to the Eastern slopes of Pirongia Maunga.⁸⁰
92. Today Whatiwhatihoe lands have all been alienated.⁸¹
93. The kāinga was dissected by the confiscation. Hōne Te One stated that the survey line for the confiscation line and the Mangauika boundary went directly through the middle of Whatiwhatihoe.⁸²
94. Therefore, following the wars the Crown confiscated around half of Whatiwhatihoe marae. The evidence is that about 200 acres of Whatiwhatihoe rests within the confiscation zone. These were the Pirongia Parish lots 329 & 330 just to the north of the confiscation line that were awarded to Hōne Te One. There is a further portion of the kāinga of about 400 acres to the south of the confiscation line in the Mangauika block (partitions A, B1A1, B1A2, B1B1 and 2).⁸³
95. The evidence is that the all of the lands of Whatiwhatihoe were alienated in various private and Crown transactions as set out below.⁸⁴

3.3.3 The loss of Whatiwhatihoe lands within the Confiscation District

96. We noted above that 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 of these lots were awarded under the New Zealand Settlements Act 1863 and the New Zealand Settlements Amendment and Continuance Act 1865. Both Lots

⁷⁹ Marr, #A178, p164

⁸⁰ *Te Maru-o-Hikairo*, #A98, p193

⁸¹ Thorne, #N53, p3; Innes, #A30, pp 55-6, 58-9

⁸² Thorne, #N53, p3

⁸³ Thorne, #N53, pp 3-4

⁸⁴ Thorne, #N53, p4; Thorne #N53(b), p1; Cunningham, Hopa, Thorne, #K31, p5

did not have any restrictions against alienation and have been alienated.⁸⁵

97. Within the confiscation zone, Lot 330 was sold around February 1900 by a private purchase.⁸⁶ Interestingly, Mr Innes records the sale of the Lot 329 from Hōne te One to William Aitken, land speculator or Auckland, on 20 July 1869.⁸⁷ It is submitted that the evidence as set out in the Non-“Raupatu” claims section of these submissions demonstrates that William Aitken was a land speculator working alongside Thomas Russell and Frederick Whitaker. In relation to Lot 329, under cross-examination, Mr Innes considered that:

*“[...] that particular area was later acquired by the government and at least earmarked for Kīngitanga Māori, but never actually granted”.*⁸⁸

98. There is evidence that two urupā from Lot 329 in Whatiwhatihoe were set aside as burial reserves in 1892 by the Crown. This suggests the lands were indeed Crown lands by that time. The two urupā are presently administered by the Department of Conservation (and are discussed further below), but the remainder of the Lot 329 is in private ownership.

3.3.4 The loss of Whatiwhatihoe lands outside the Confiscation District

99. The alienations of the lands of Whatiwhatihoe outside the confiscation district (within the Mangauika Block) are itemised in the evidence of Mr Thorne.⁸⁹
100. Te Rautaramoa Māpi and Murikoraki Ani and two others were awarded 100 acres in Mangauika 2 at Whatiwhatihoe, this is in the south east corner of the Mangauika Block adjoining Kaipiha.⁹⁰
101. The Whatiwhatihoe lands within the Mangauika Block were alienated as

⁸⁵ Thorne, #N53; Innes, #A30, pp 55-6, 58-9

⁸⁶ #A21; Innes, #A30, p66

⁸⁷ #A21; Innes, #A30, p70

⁸⁸ Transcript of Raupatu hearings, April 2013, #4.1.10, p1208

⁸⁹ Thorne, #N53(b), p1

⁹⁰ Thorne, #N53, p4

follows:⁹¹

| Block | Alienation | Area | Date |
|-------|--------------------------------------|------------|----------------------------------|
| A | Crown purchase | 1,901:0:13 | 14 March 1894 |
| B1A1 | Crown purchase, then sold to C. Fear | 47:0:20 | 31 January 1908 and 25 July 1934 |
| B1A2 | Private Purchase to C. Fear | 23:3:10 | 3 September 1923 |
| B1B1 | Private Purchase to C. Fear | 1:2:37 | 5 November 1948 |
| B1B2 | Private Purchase by C. Fear | 21:3:13 | 27 September 1918 |
| 2 | Private Purchase by C Whitten | 98:3:29 | 23 November 1918 |

102. Despite the Crown purchase of March 1894, there is correspondence from a Ngāti Hikairo owner seeking a lease to continue to live at Whatiwhatihoe. On 26 November 1894, following the sale of the shares and partition of the Crown interest as the Mangauika A Block, Hemopō Kewene wrote to the Crown seeking a lease to allow him and his whānau to continue to live in their home at Whatiwhatihoe. He stated that he and his whānau had lived at Whatiwhatihoe since well before the Mangauika Block was first adjudicated upon (prior to 1889).⁹²

103. The evidence before this Tribunal shows that the entire area of Whatiwhatihoe outside the confiscation zone was sold to Crown and private purchases up to about 1920.

3.3.5 Management of Whatiwhatihoe as a significant cultural site

104. The Ngāti Hikairo claims also allege that the Crown has failed to protect Whatiwhatihoe, and two urupā on the site, from desecration and damage. It is submitted that the evidence suggests that the Crown and local authorities do not appear to be properly aware of nor respect the significance of this site.

105. Ngāti Hikairo have given evidence that Whatiwhatihoe is being damaged by farming practices and there have been various subdivisions approved by local Council, and also urban development which are destroying this

⁹¹ Berghan, #A60, pp 450-454; Thorne, #N53(b), p1

⁹² Berghan, #A60, pp 451-452

hugely significant site.⁹³

106. Mr Thorne stated that:

There once was a puna at Whatiwhatihoe that was used for ceremonial practices. The name of the puna was Te Tekaumārua. It played an important role for Ngāti Hikairo and the Kīngitanga. It played a central role in the first ever poukai, that was held at Whatiwhatihoe in 1884. The waters were utilised and referred to in proceedings of the poukai. The initial name for the poukai, was actually Te Punakai which came about due to the relationship of the hākari to the puna. This is referred to in the pātere “Ka mau tā Whakamarurangi ki tōna ringaringa” which refers to the puna wai, puna kai, puna tangata. This puna is believed to have been destroyed by farming practices”.⁹⁴

107. There are two urupā at Whatiwhatihoe that are also being damaged. These were set aside by the Native Land Court in about 1892 within Lot 329 of the Parish of Pirongia.⁹⁵ The two urupā are traditional urupā of Ngāti Hikairo and were also used by the Kīngitanga while residing at the Pā from the 1870 to 1890s. They are both of cultural significance to Ngāti Hikairo.⁹⁶

108. The two urupā are under the management of the Department of Conservation. The urupā reserves remain Crown land today as reserves subject to the Reserves Act 1977.⁹⁷

109. The urupā are not fenced and have thus been continually subject to grazing and other farming activities.⁹⁸

110. Ngāti Hikairo seek access to and the return of these urupā reserves.⁹⁹

3.3.6 Living Conditions at Whatiwhatihoe after the Raupatu

111. The late Mac Bell gave evidence before this Tribunal that the confiscation saw lots of people “[...] crammed into kāinga surviving on small stretches

⁹³ Thorne, #N51, p18

⁹⁴ Thorne, #N51, pp 18-19

⁹⁵ *Te Maru-ō-Hikairo*, #A98, p 189

⁹⁶ *Te Maru-ō-Hikairo*, #A98, pp 189-90

⁹⁷ *Te Maru-ō-Hikairo*, #A98, p 189; see NZ Gazettes 1893, p345; 1979, p2290; SO Plan 320A and SO 13215 both South Auckland Registry

⁹⁸ *Te Maru-ō-Hikairo*, #A98, pp 189, 190

⁹⁹ *Te Maru-ō-Hikairo*, #A98, pp 189, 190

of riverways” and he went on to state “*I am sorry to say that Whatiwhatihoe was such a hell-hole for a period*”.¹⁰⁰

112. Indeed the Ngāti Hikairo report, *Te Maru-ō-Hikairo*, noted that newspaper reports of that period highlighted the difficulties of providing for the masses who lived at Whatiwhatihoe.¹⁰¹

113. Both Mr Bell and Mr Thorne described alcohol issues at Whatiwhatihoe in the late 1870s and 1880s. The Whatiwhatihoe community was under pressure as the people included a mix of displaced peoples from their lands in a post-war environment.¹⁰² Around 1882-3 the people at Whatiwhatihoe decided to stamp alcohol out of their community and there was a noticeable improvement after this.¹⁰³

114. The iwi also sought to improve their circumstances through the introduction of the Poukai to assist the needy and to affirm the Kīngitanga. The first official Poukai was held at Whatiwhatihoe in 1884.¹⁰⁴

3.3.7 Conclusion

115. The story of Whatiwhatihoe is far more complex than these submissions can convey, but the loss of the lands below this kāinga started after the Crown drew its confiscation line through the middle of the kāinga.

116. In both the Compensation Court awards to the North (in the Pirongia Parish lots 329 and 330) and in the Native Land Court determinations to the South (the Mangauika block), individuals obtained titles to the land containing Whatiwhatihoe. Most of the lands were lost before 1900, but there were alienations (both Crown and private) through to about 1920.

117. Whatiwhatihoe became the centre of the Kīngitanga for some years in the 1880s. After the wars it housed a number of refugees from the North, but this created a number of pressures on the community. The people were

¹⁰⁰ Bell, #K11, p8

¹⁰¹ *Te Maru-ō-Hikairo*, #A98, p181

¹⁰² Thorne, #I11, p23

¹⁰³ Thorne, #I11, p23

¹⁰⁴ *Te Maru-ō-Hikairo*, #A98, p292

clearly struggling with the aftermath of the wars, lack of food, and the introduction of alcohol. It was fitting then that Whatiwhatihoe also saw the first of the Poukai devoted to the Kīngitanga and the health of the people.

118. The evidence has described a poor management of the site by the Crown and local bodies. Ngāti Hikairo also claim there has been poor management of two urupā of Whatiwhatihoe by the Department of Conservation and they seek their return.

3.4 Crown purchase policy and practice & land loss case studies

119. It is noted above in the land loss overview submissions that Ngāti Hikairo lost a large proportion of their land to Crown purchases between 1898 and 1920.¹⁰⁵ In this section, counsel canvass the Crown purchase practice in greater detail and we discuss some case studies of both Crown and private transactions.

120. The Wai 1113 claim includes a number of allegations in relation to Crown purchasing.¹⁰⁶ The key issues in the claims are:

- (i) That the Crown purchase practices undermined Ngāti Hikairo chiefly authority, and Māori customary law, over Ngāti Hikairo lands;
- (ii) The Crown dealt with individual interests and failed to recognise and acknowledge the tribal ownership of Ngāti Hikairo lands;
- (iii) That the Crown's land purchase negotiations and transactions for Ngāti Hikairo lands were pursued aggressively throughout the Ngāti Hikairo rohe, including the purchasing of the interests of minors;
- (iv) That the Crown conducted purchases in an environment where preemption was applied and the Crown was the only potential purchaser of their lands;

¹⁰⁵ Thorne, #N53(b), Appendices N1-N3

¹⁰⁶ Wai 1113, 14 December 2011, pp49-57

- (v) That numerous Crown purchases caused a proliferation of partitions that undermined Māori land use; and,
- (vi) The Crown failed to provide adequate reserves from out of the purchased blocks.

3.4.1 Background to the Crown Purchases

121. The obvious context to the Crown's purchasing practice was the Native Land Court legislation which provided for individualised shares in multiply-owned land that permitted alienations to be made without any reference to the iwi or the rangatira of the iwi.¹⁰⁷ Another key context to the purchases was the re-imposition of Crown pre-emption. The Crown imposed purchase restrictions from 1884 in relation to Ngāti Hikairo's lands so that Ngāti Hikairo individuals were forced to engage with the Crown if they so wished to alienate their interests.¹⁰⁸

122. The Crown was on notice of the Māori opposition to this policy. In 1897 Pepene Eketone and others from Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, Ngāti Hikairo, and Whanganui (apparently the five tribes of Te Pitihana/Te Ōhākī Tapu), petitioned Parliament for the removal of all restrictions on the private leasing (and sale) of lands which had passed through the Native Land Court. They sought to deal with their lands as they saw fit and complained that they had been '*given no voice to arrange and agree together with the Government officer upon the price to be paid per acre for our lands when purchased.*'¹⁰⁹ They were especially critical of the Crown's pre-emptive right of purchase, the government's unwillingness to consult over the matter of price, and its apparent indifference to the matter of landlessness on the part of Māori. The Native Affairs Committee, describing the requests in the petition as 'fair and reasonable,' referred the petition to the government for favourable consideration. The government declined to act.¹¹⁰

¹⁰⁷ Husbands & Mitchell, #A79, p528; Boulton, #A67, p445

¹⁰⁸ Boulton, #A67, pp 137-8, 462; #A67(b), p4

¹⁰⁹ Hearn, #A73, p104

¹¹⁰ Hearn, #A73, p82; Boulton, #A67, pp 479-480

123. The Crown had a policy in the 1890s for creating reserves of 10% of blocks purchased from Māori, but only applied this policy on few occasions and in cases where large blocks were sold (the policy ending up less as a supportive measure for Māori and more as a tactic to get Māori to sell larger areas). Also during this period the Crown initially decided not to purchase the interests of minors, but this policy was “eroded” in the first two years.¹¹¹

3.4.2 Specific case studies of Crown purchase transactions

Pirongia West Block

124. As noted in the land loss overview submissions, between 1895 and 1900 around 63% of the Pirongia West block was alienated to the Crown.¹¹² Indeed, from late-1893 to mid-1895 the Crown focused upon purchasing into the Pirongia West and Kāwhia blocks.¹¹³ It is submitted the speed of purchasing and the Crown tactics in the purchase caused prejudice to the Ngāti Hikairo owners. In particular, the Crown purchased the interests of minors in the Pirongia West Block.

125. The following are the key background facts to the claims in relation to the Pirongia West Block:

- i. The Kopua-Pirongia-Kāwhia Block was determined on 6 June 1888.
- ii. The “Pirongia” Block was ordered on 12 February 1889 after the partitioning off of the Mangaora Block.
- iii. The Waihōhonu, Motukōtuku, and Mangawhero title orders were made on 23 March 1889.
- iv. The Pirongia West Block title investigation was ordered on 28 March 1892. There was a rehearing for the Pirongia West Block

¹¹¹ Boulton, #A67, pp 479-480; #A67(b), pp 15, 18, 30

¹¹² Thorne, #A98, pp177-180

¹¹³ Boulton, #A67, p386

and the title order was made on 12 September 1894. The Pirongia West Block contained 36,370 acres.¹¹⁴

v. The Pirongia West block was to be made inalienable.¹¹⁵

126. How fast was the purchasing of individual interests? In the 6 years to 1900 the Crown was able to purchase individual interests with such speed that around 63.2% of the Block had been alienated by 1900. This was about 22,923 acres out of the original 36,389 acres or so.¹¹⁶ There was evidence that Hōne Kaora (John Cowell) promised the Crown that he would assemble 'over half of the owners' of the Pirongia block, all of whom would be willing to sell their shares if the price was raised from three shillings and sixpence to five shillings an acre. This recommendation was approved and six months later the Court made two awards totalling 14,798 acres to the Crown.¹¹⁷

127. In the case of the Pirongia West 3B block the Crown had by 1900 purchased individual interests amounting to about 44% of that block and this was translated by the Court into a Crown partition of 6,162 acres out of the total of 14,067 acres. The Ngāti Hikairo non-sellers lost a considerable amount of their ancestral lands through this transaction. The non-sellers lost a further 168 acres as a consequence of the transaction in payment of the survey costs.¹¹⁸

128. It is submitted that the allegation that the Crown purchased the shares of minors (through their trustees) is made out. It is submitted that the issue is that, despite the involvement of the trustees, the Crown was nevertheless depriving young persons of their tūrangawaewae without their informed consent. Their interests were sold before they might be old enough to properly consider their position. In the Pirongia West deed, 38 of the 163 interests were transferred to the Crown by trustees acting on the behalf of

¹¹⁴ Berghan, #A60, p745

¹¹⁵ Berghan, #A60, p749

¹¹⁶ Douglas *et al*, #A21

¹¹⁷ Husbands & Mitchell, #A79, p247

¹¹⁸ Husbands & Mitchell, #A79, pp 258-259

minors (between December 1894 and November 1897).¹¹⁹ Accordingly, Ngāti Hikairo has queried the validity of the transfer of the Pirongia West 3A block and various of the Mangauika blocks because of the loss of so many shares of minors.¹²⁰

129. The Ngāti Hikairo evidence includes a series of flow charts that plot the partitioning of the Pirongia West block.¹²¹ These flow charts display:

- i. The widespread alienation of land in the Pirongia West blocks;
- ii. The high degree of fractionation and fragmentation of land, including the sheer numbers of partitions;
- iii. The frequency of the different modes of land loss – Crown purchases can be seen to dominate the charts; and,
- iv. The numbers of blocks that were subject to “Europeanisation”.

130. Appendix N1 of the evidence of Mr Thorne shows that when the Pirongia West 3 was partitioned on 18 September 1894, it comprised 28,000 acres and had 135 original owners.¹²² By February 1908, successive partitions in 1895, 1898, 1899, 1901, 1902 and 1908 had reduced the remaining Māori-owned portion of the block to 14 subdivisions, none of which contained more than ten owners and all but one of which was less than 1000 acres in size.¹²³

131. Dr Hearn gave evidence that the Native Land Commission of 1907 identified that significant fragmentation was occurring within the Māori land titles as a consequence of the numerous partitions rendered necessary by the Crown purchases and the subsequent adjustments by the whānau on partition and succession.¹²⁴ The Native Land Commission noted that in the Kinohaku West block one whānau had four or five small partitions of unequal area of which the whānau might occupy one or two and lease the

¹¹⁹ Husbands & Mitchell, #A79, p419

¹²⁰ Thorne, #N51, pp 23-4

¹²¹ Thorne, #N53(b); See also Husbands & Mitchell, #A79, p496

¹²² Husbands & Mitchell, #A79, p496; See also Appendices N1 to N3 showing the partitions of the Pirongia West Block in Thorne, #N53(b)

¹²³ Husbands & Mitchell, #A79, p496; See also Appendix N2 showing the partitions of the Pirongia West 3 Block in Thorne, #N53(b)

¹²⁴ Hearn, #A73, p95

others to adjoining settlers on the Crown portions. The Commission noted that this occurred also in the Pirongia West Blocks¹²⁵ It is submitted that the Appendices in Mr Thorne's evidence highlight this fragmentation arising out of the Crown purchases.

Mangauika Block

132. It is submitted that the pattern of concentrated Crown purchasing within a relatively short timeframe also occurred in the Mangauika block. The evidence is that the alienation of most of the land in the Mangauika block occurred broadly between 1890 and 1939 with about 85% of the block being lost to Crown purchases of individual shares.¹²⁶ The evidence also points to the Crown making a significant profit on the sale of the lands to settlers and such profits went towards the construction of the railway.

133. The alienations are listed below:¹²⁷

Mangauika Block ordered in 1890: 5,473 acres

| | |
|-------------------|---|
| Mangauika A: | 1901 acres were purchased by the Crown in 1894 Acquired under the Main Trunk Railway Application Act 1886 |
| Mangauika 1A: | 685 acres were purchased by the Crown in 1894 Acquired under the Main Trunk Railway Application Act 1886 |
| Mangauika 1B2s1: | 387 acres proclaimed Crown Land in 1901 |
| Mangauika 1B2s2A: | 168 acres proclaimed Crown Land in 1909 |
| Mangauika 1B2s2B: | 544 acres in 1929 |
| Mangauika B1A1: | 47 acres Crown purchase in 1908 |
| Mangauika B2s1: | 450 acres proclaimed as Crown Land in 1901 for Education Reserve |
| Mangauika B2s2: | 428 acres land taken 1968 for Waterworks purposes |
| Mangauika 3A: | 40 acres partitioned to the Crown in 1908 |

134. Overall, the Crown purchased 3,938 acres out of 5,473 acres in the Mangauika block.¹²⁸ Most of the Mangauika block was alienated between 1890 and 1939 with about 85% of the block being lost to Crown purchases of individual shares.¹²⁹ Between April 1890 when the first purchasing

¹²⁵ Hearn, #A73, p95

¹²⁶ Douglas *et al*, #A21

¹²⁷ Thorne, #N53, pp 9-10

¹²⁸ Douglas *et al*, #A21, p117

¹²⁹ Douglas *et al*, #A21

began and the partition of the Crown's purchase interests on March 1894, already 47.3% of the Mangauika Block was sold.¹³⁰

135. There is evidence that the Crown Purchase agents went to some dubious lengths to obtain land sales from Māori in Te Rohe Pōtae. In about 1894 the Crown purchased the Mangauika A block of 1,901 acres and the Mangauika 1A block of 685 acres using the North Island Main Truck Loan Act monies.¹³¹ This was 2,586 acres out of the total block of 5,473 acres (or 47% of the block).¹³² When this transaction began in April 1890 Land Purchase Agent Wilkinson described how he had purchased the first two shares of the Mangauika Block (and being the first shares to be bought in the wider Te Rohe Pōtae block). He described how difficult and time-consuming it had been to get the two sellers to agree to sell and that they had wanted to complete the transaction at night and in secret so that they might not be seen to be doing a sale. This indicated the lengths the Land Purchase Officers would go to achieve a sale and overcome Māori resistance to alienations.¹³³
136. The lands that were purchased using the North Island Main Truck Loan Act monies were on sold to settlers at a profit to aid the construction of the North Island Main Truck Railway.¹³⁴
137. The Mangauika block was an example where the Crown did apply its 10 percent reserves policy of the 1890s. This was the only case of reserves under this policy being created on Ngāti Hikairo lands. Most of these reserves have now been alienated:¹³⁵

¹³⁰ Douglas *et al*, #A21, Mangauika Block report

¹³¹ Cleaver & Sarich, #A20, p94

¹³² Thorne, #N53(b)

¹³³ Boulton, #A67, p222

¹³⁴ Cleaver & Sarich, #A20, p131

¹³⁵ Boulton, #A67, pp 250, 433

| Reserve | Acres | Fate |
|----------------|--------|------------------------|
| Mangauika | 190.11 | Private purchase, 1912 |
| Mangauika No 1 | 68.57 | Remains Māori land |

3.4.3 Case Studies – Crown and Private purchasing

138. In the following we look closely at two blocks as case studies for the various modes of land loss. The cases of the Motukōtuku and Kāwhia A (Kōpare) blocks demonstrate how Ngāti Hikairo land was alienated through private transactions and again show how a multitude of partitions have occurred in relatively small blocks. The work of local authorities in promoting the alienation of Māori land or putting pressure on the owners to sell is also visible.

Motukōtuku Block

139. The Motukōtuku block provides a case study of private alienations driven by the Kāwhia County Council. It is submitted, whether or not the Crown can be held directly responsible for the activities of the County Council, that the Crown was at fault for establishing the mechanism that the Council employed. Effectively the Crown helped create the environment where the Motukōtuku Block could be alienated.

140. Indeed, the Crown passed legislation that allowed the Māori Land Court, upon application from the County Council, to compulsorily appoint the Māori Trustee as an agent for owners of Māori land and with the power to sell or lease the property (Part 3/Māori Purposes Act 1950 and Part 25/Māori Affairs Act 1953).¹³⁶ This matter is further discussed in the section of these submissions on vesting in the Māori Trustee.

141. On 23 March 1889, the Native Land Court made an order issuing the Motukōtuku Block of 195 acres to Hōne Kaora and the 9 descendants of

¹³⁶ Bassett, #A75, pp 227-228

Pumipi Moke and Matehaere Hurihia. The property was to be inalienable from sale.¹³⁷

142. In 1953 the Kāwhia County Council made an application to the Māori Land Court for the Māori Trustee to assume management of the Motukōtuku A2 Block under Part 3/Māori Purposes Act 1950 and Part 25/Māori Affairs Act 1953.¹³⁸ The Māori Land Court struck out the case for the Motukōtuku A2 block, but on the basis that the owners agreed to sell the property.¹³⁹

143. The details of the Council activities in relation to the Motukōtuku block are set out below:

| Block | Area | Notes¹⁴⁰ | Purchaser | Date |
|--------------|-------------|--|------------------|-------------------|
| A1 | 50:0:00 | Referred to owners by Council, he was a local farmer | R. Braine | 15 November 1956 |
| D | 78:1:31 | Referred to the owners by Council, he was a local farmer and next-door neighbour | J. Laimbeer | 9 January 1968 |
| A2 | 65:1:00 | Vesting application by Council, January 1953 “struck out” as property sold | M. Turnbull | 18 September 1968 |

144. The view of the technical witness, Ms Luiten, was that the Kāwhia County Council, with the power to make applications to have the Māori Trustee vested as agent for the owners, began to assert pressure on Māori landowners and to act like a real estate agent and the Māori landowners behalf.¹⁴¹

Kāwhia A (Kōpare)

145. The Kāwhia A (Kōpare) case study shows the impact of various private purchases during the 20th century along with the growing number of partitions.

146. The Kāwhia A (Kōpare) block consisted of 196 acres.¹⁴² The evidence of

¹³⁷ Berghan, #A60, p745

¹³⁸ Bassett, #A75, pp 227-228

¹³⁹ Luiten, #A24, pp 261, 449

¹⁴⁰ Luiten, #A24, pp 261, 449

¹⁴¹ Luiten, #A24, p261

¹⁴² Berghan, #A60, p251

Ngāti Hikairo shows that between 1892 and 1920 the Kāwhia A block was partitioned into 10 small lots (each around 30 acres or less).¹⁴³ Between 1900 and about 1940 around 164 acres was sold through 5 private purchases and a single Crown purchase and only leaving about 46 acres for the owners across three sections.¹⁴⁴

147. Between 1952 and 1954 the Kāwhia County Council made applications for the Māori Trustee to take control of the Kāwhia A2C1 and Kāwhia A2D1 blocks. The application was because both Kāwhia A2C1 and Kāwhia A2D1 were unoccupied, with unpaid rates, and somewhat overgrown with weeds. These applications were successful.¹⁴⁵

148. Following the passing of the Māori Affairs Amendment Act 1967 about 24.5 acres was “Europeanised” and may have been sold. About 18 acres of this amount was in the Kāwhia A2A block which was managed by Māori Affairs and where there was considerable purchasing of shares so that around 33 owners were reduced to 4 owners.¹⁴⁶

149. The Kāwhia A block had originally contained 196 acres of Māori Land, but today around 19 individual Ngāti Hikairo owners hold a single remaining Māori Freehold land block of 7.5 acres within Kōpare. This is the Kāwhia A2D1 block which was passed to the Māori Trustee for management. This land has remained managed by the Māori Trustee since the 1954 orders. There are currently 19 owners, with 13.113 shares, and the Mangaora A Incorporation owns 7.4 shares.¹⁴⁷ The chart in the evidence of Mr Thorne shows how the Kāwhia A block was partitioned in 1901 to cut out a Crown purchase, but then through the 1920s to 1940s there was a reasonably steady stream of private alienations.

¹⁴³ Thorne, #N53(b), p21

¹⁴⁴ Berghan, #A60, pp 266-267

¹⁴⁵ Bassett. #A75, pp 297-298; Luiten, #A24, p 260

¹⁴⁶ Berghan, #A60, pp 266-267

¹⁴⁷ Māori Land Online search, October 2014,
<http://www.maorilandonline.govt.nz/gis/title/6403.htm>

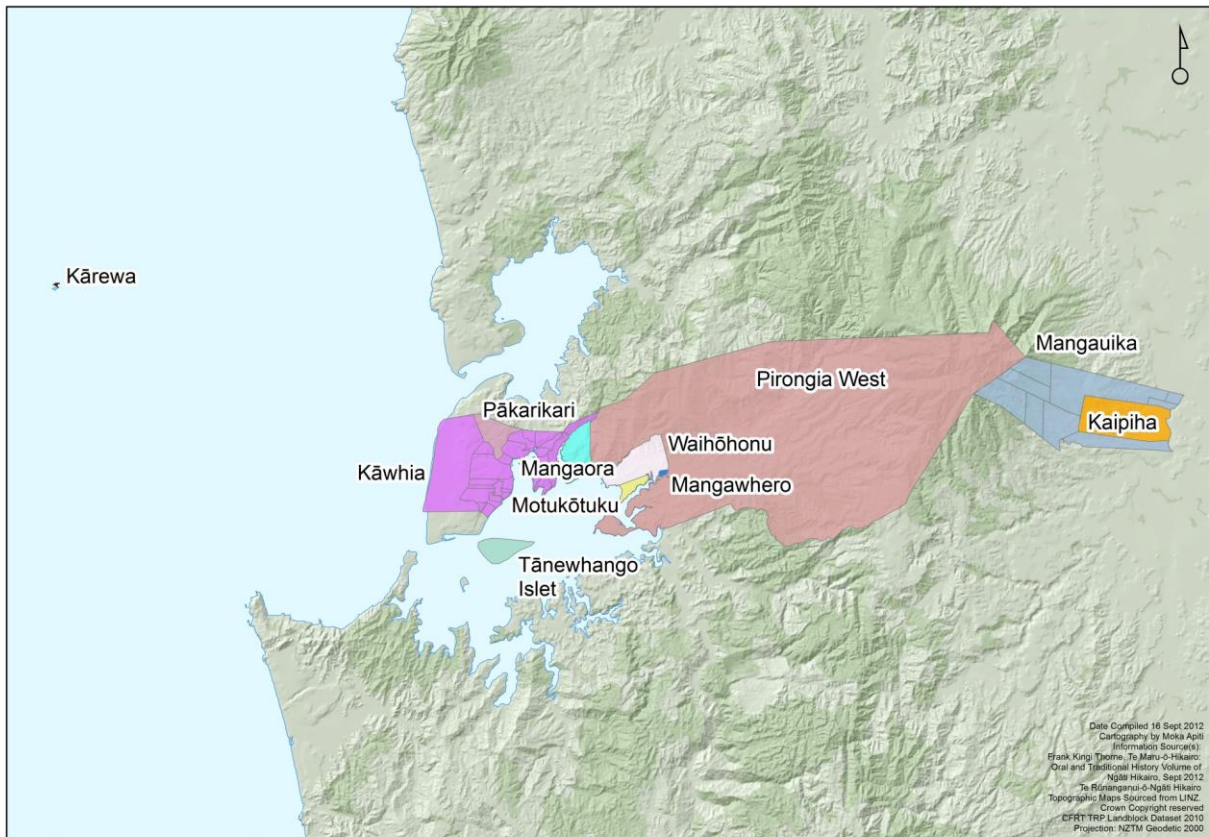
3.4.4 Conclusions

150. It is submitted that the evidence demonstrates that most of Ngāti Hikairo's lands were lost through Crown purchases between about 1890 and 1910. The case studies show that thereafter there was a steady stream of land loss to private purchases through the 1920s to 1960s.
151. The partition analysis of the blocks highlights the concern raised by the Native Land Commission of 1907 that large numbers of relatively small blocks were being partitioned out following Crown purchase transactions and owner successions.
152. These submissions have also highlighted the Crown's practice of purchasing the interests of minors in the Mangauika and Pirongia West blocks.
153. The case studies followed the activities of the Kāwhia County Council which appears to have dealt with Māori land management issues and rates arrears by applying pressure to have Māori land sold or at least managed by the Māori Trustee. The Kāwhia A (Kōpare) block contained 196 acres. However, between 1900 and 1920 there were ten partitions ranging from around 6 to 30 acres in size. It should not be forgotten that these are rural farm lots. Presently there are only 7 acres of the Kāwhia A block partially remaining in Ngāti Hikairo ownership as Māori Freehold Land (the Proprietors of Mangaora A Incorporation are the majority shareholders).

3.5 Native Land Court costs and survey liens

154. We have previously submitted that the Native Land Court process individualised tribal so that individuals could act independently of the community and their Rangatira and sell their interests in land. This section focusses on specific impacts of the Native Land Court's activities upon Ngāti Hikairo and includes examples of the levying of survey charges and court costs that, it is submitted, led to the loss of land.
155. The submissions will conclude with a particular claim in relation to the

surveying of part of the Pirongia West block and a resulting loss of 800 acres of the Pirongia maunga. Below is a map that shows the Ngāti Hikairo blocks that went before the Native Land Court and which were awarded to Ngāti Hikairo.



3.5.1 The Court fostered debt

156. Ngāti Hikairo claim that the Crown was responsible for establishing the Native Land Court which fostered debt among the people with a consequential land loss. First, it must be noted that Ngāti Hikairo communities or individuals were forced to engage in the Native Land Court process or risk not having their land interests legally recognised.¹⁴⁸

157. However, the Court process was costly. Ngāti Hikairo communities or individuals were forced to pay Court costs of up to £1 per day.¹⁴⁹ The available sources show evidence of high costs of travel and accommodation and scarcity of provisions at the Court imposing burdens

¹⁴⁸ Husbands & Mitchell, #A79, p529

¹⁴⁹ Husbands & Mitchell, #A79, p529

on groups attending.¹⁵⁰ For example, in the case of the Pirongia West Block there were a number of partition hearings and re-hearings between 1888 and 1900 that in total lasted for around 83 days with a total cost of around £75.13s.¹⁵¹

158. Husbands and Mitchell gave evidence that the Court costs of partitions affected all the owners:

*“Partitions necessitated by the cutting out of interests acquired by the Crown incurred further fees for those amongst the owners who had chosen not to sell. Although there is no record of the non-sellers being levied for the so-called residual blocks created by the definition of the Crown’s interest in Pirongia West 1C and 3A in May 1895, they were charged 20s for each of the four orders establishing what remained of blocks 1, 1C, 2 and 3B after the Crown had received its share in these blocks in March 1898”.*¹⁵²

3.5.2 Survey costs

159. The Native Land Court process required surveys of the land brought before it. The most substantial cost arising out of the Native Land Court process within Te Rohe Pōtae was the survey costs – these were unavoidable.¹⁵³

160. Altogether, more than of £22,395 in survey charges was levied upon land within the boundaries of the Aotea-Rohe Pōtae block (including Wharepuhunga) between 1892 and 1907. Within the Te Rohe Pōtae Inquiry district as a whole (excluding extension areas) the sum total of survey charges levied by the Native Land Court prior to 1907 amounted to a minimum of £23,728.¹⁵⁴

161. The liens and the various survey costs were usually paid by selling lands of the owners or the liens at least caused a pressure to sell lands. The Crown was not prepared to let Māori pay survey liens in “dribs and drabs”,

¹⁵⁰ Husbands & Mitchell, #A79, p530

¹⁵¹ Husbands & Mitchell, #A79, pp 289-291

¹⁵² Husbands & Mitchell, #A79, p291

¹⁵³ Husbands & Mitchell, #A79, p529

¹⁵⁴ Husbands & Mitchell, #A79, p529

but was quite willing to accept land in lieu payment in “dribs and drabs”.¹⁵⁵

162. As a whole, the various iwi of Te Rohe Pōtae lost around 91,000 acres as payment in lieu of survey costs.¹⁵⁶ Ngāti Hikairo had their own specific survey costs to meet. The Native Land Court imposed survey liens on nearly all lands of Ngāti Hikairo that went through the Native Land Court. For example the Kāwhia block subdivisions and liens were as follows:¹⁵⁷

| Block | Name | Area | Survey Lien £.s.d |
|--------------|------------------|-------------|------------------------------|
| Kāwhia A | Kōpare | 196/0/07 | 11.7.4 |
| Kāwhia B | Pohutu | 32/0/16 | 1.17.3 |
| Kāwhia C1 | Paiaaka | 222/0/24 | 12.17.7 |
| Kāwhia C2 | Puketutu | 62/0/32 | 3.12.1 |
| Kāwhia C3 | Pokopoko | 81/3/10 | 4.14.11 |
| Kāwhia C4 | Motutara | 181/0/00 | 10.9.10 |
| Kāwhia D | Hiraumoko | 144/1/27 | 8.7.5 |
| Kāwhia E | Te Whetutakaora | 146/0/15 | 8.9.4 |
| Kāwhia F | Ngairo | 2,396/0/00 | 138.18.0 |
| Kāwhia G1 | Murumurupārāwera | 19/0/24 | 1.2.2 |
| Kāwhia G2 | | 50/1/06 | 2.18.4 |
| Kāwhia H | [Tribal Reserve] | 0/1/16 | 0.0.5 |
| Kāwhia K | Te Puru | 28/0/34 | 1.12.8 |
| Kāwhia L | Omarutahi | 56/1/19 | 3.5.4 |
| Kāwhia M | PapaoKārewa | 60/3/19 | 3.10.7 |
| Kāwhia M1 | Te Whauatemarama | 35/2/16 | 2.1.3 |
| Kāwhia N | Hauāuru | 105/2/27 | 8.17.1 |
| Kāwhia O | Paetonga | 521/1/17 | 30.4.5 |
| Kāwhia P | Motungaio | 269/0/00 | 15.11.11 |
| Kāwhia R | Rangiāhua | 175/0/21 | 10.3.1 |
| Kāwhia S | Paretao | 72/0/32 | 4.3.8 |
| Kāwhia T | Tōrea | 210/1/03 | 12.3.9 |
| Kāwhia U | Kaipāpaka | 73/0/21 | 4.4.9 |
| Kāwhia W | Mōkaikāinga | 147/1/13 | 8.10.11 |

163. The evidence before this Tribunal is that from 1897 to 1901 the Crown took at least 748 acres of land from Ngāti Hikairo in lieu of survey liens (there may be other lands):¹⁵⁸

| Block | Liens including interest £ | Price per acre | Approx Acres taken | Crown block |
|--------------|-----------------------------------|-----------------------|---------------------------|--------------------|
| Kāwhia D2 | 12.12.3d | 20s | 13 | D2A |

¹⁵⁵ Hearn, #A73, p98

¹⁵⁶ Husbands & Mitchell, #A79, p536

¹⁵⁷ Berghan, #A60, pp 252-253

¹⁵⁸ Hearn, #A73, pp 98-99; Husbands & Mitchell, #A79, pp 352-357; Boulton, #A67, p431

| Block | Liens including interest £ | Price per acre | Approx Acres taken | Crown block |
|--------------------|----------------------------|----------------|--------------------|-------------|
| Kāwhia M1s2 | 5.0.5d | 28s | 4 | M1s2A |
| Kāwhia C1s2 | 17.15.1d | 20s | 18 | C1s2A |
| Kāwhia C4 | 16.17.11d | 20s | 18 | C4A |
| Kāwhia B2 | 5.11.5d | 20s | 6 | B2A |
| Kāwhia E2 | 5.16.6d | 20s | 6 | E2A |
| Kāwhia F | - | - | 141 | F1 |
| Mangauika | 38.1.3d | 7s.6d | 101 | 2B2A |
| Mangauika B2 | - | - | 10 | - |
| Mangauika 1B2 | - | - | 126 | - |
| Pirongia West 1 | - | - | 94 | - |
| Pirongia West 1C2 | - | - | 4 | - |
| Pirongia West 2 | - | - | 2 | - |
| Pirongia West 3B | - | - | 169 | - |
| Pirongia West 3B2B | 36.12.7d | 20s | 36 | 3B2B1 |

164. A new round of survey charging orders delivered by the Court in January 1902 for the partition of Pirongia West, meanwhile, brought the total cost for the survey of that block to £760 15s 5d, a very significant increase on the £151 10s 10d that had been initially charged by the Chief Surveyor.¹⁵⁹

165. The interest charges on the survey liens (5%) also accumulated. For example, in Pirongia West 1s2G interest charges of £8.4.7d saw the lien on the section increase 26 percent from £34.18.3d to £43.17.10d by the time the lien was finally paid. Similar high totals of accrued interest were incurred in sections 2D and 2H of the same block, as well as in sections 2A and 3B of Pirongia West 3B. These costs were spread around a small number of owners (less than 8 persons per block).¹⁶⁰

166. Examples of the increase of the survey liens as a consequence of the 5% interest charges in certain Ngāti Hikairo blocks are shown below:¹⁶¹

| Block | Original Lien | Interest Accrued on Lien | Order | New Total | Percentage Increase |
|---------------------|---------------|--------------------------|--------|-----------|---------------------|
| Pirongia West 1s2D | £8.19.8 | £2.3.2 | £0.5.0 | £11.7.10 | 27 |
| Pirongia West 1s2G | £34.18.3 | £8.14.7 | £0.5.0 | £43.17.10 | 26 |
| Pirongia West 1s2H | £16.4.0 | £4.0.0 | £0.5.0 | £20.9.0 | 26 |
| Pirongia West 3Bs2A | £20.19.11 | £5.0.9 | £0.5.0 | £26.5.8 | 26 |

¹⁵⁹ Husbands & Mitchell, #A79, p307

¹⁶⁰ Husbands & Mitchell, #A79, p310

¹⁶¹ Husbands & Mitchell, #A79

| Block | Original Lien | Interest Accrued on Lien | Order | New Total | Percentage Increase |
|----------------------|----------------------|---------------------------------|----------------------|------------------|----------------------------|
| Pirongia West N3Bs2F | £23.13.0 | £5.14.6 | 0.5.0+ 0.4.9 fees | £29.17.3 | 26 |

167. Some examples of the acres taken by the Crown as a percentage of the remaining land to the non-sellers for certain Ngāti Hikairo blocks are set out below: ¹⁶²

| Block | Year | Acres left to nonsellers after Crown has cut out its interest | Acres taken by Crown to satisfy non-sellers share of lien | Acres taken by Crown to pay lien as a percentage of land left to non-sellers |
|-------------------|-------------|--|--|---|
| Pirongia West 1 | 1898 | 4,418 | 93.75 | 2.1 |
| Pirongia West 1C2 | 1898 | 185.5 | 4.0 | 2.2 |
| Pirongia West 2 | 1898 | 80 | 2.0 | 2.5 |
| Pirongia West 3B | 1898 | 7,905 | 168.5 | 2.1 |
| Mangauika B2 | 1901 | 436 | 10.0 | 2.3 |
| Mangauika 1B2 | 1901 | 1,117.5 | 125.9 | 11.3 |
| Kāwhia F | 1901 | 1,626.5 | 140.5 | 8.6 |

168. Some examples of the acres taken by the Crown upon application by the Chief Surveyor as a percentage of the block for certain Ngāti Hikairo blocks is set out below: ¹⁶³

| Block | Year | Acreage | Acreage Acres taken in lieu of lien | Acres taken in lieu of lien as a percentage of the block |
|--------------------|-------------|----------------|--|---|
| Pirongia West 3B2B | 1906 | 307 | 36.00 | 11.7 |
| Kāwhia D2 | 1906 | 88 | 12.75 | 14.5 |
| Kāwhia M1s2 | 1906 | 32 | 3.50 | 10.9 |
| Kāwhia C1s2 | 1906 | 181 | 17.75 | 9.8 |
| Kāwhia C4 | 1906 | 181 | 16.75 | 9.3 |
| Kāwhia B2 | 1906 | 25 | 5.50 | 22.0 |
| Kāwhia E2 | 1906 | 111 | 5.75 | 5.2 |
| Kāwhia S | 1907 | 72 | 3.00 | 4.2 |
| Kāwhia U2 | 1907 | 18 | 4.25 | 23.6 |
| Kāwhia U3 | 1907 | 18 | 4.25 | 23.6 |

¹⁶² Husbands & Mitchell, #A79

¹⁶³ Husbands & Mitchell, #A79

3.5.3 Land loss through a survey error in the Pirongia West Block

169. The Crown has failed to ensure that all of Ngāti Hikairo's lands within Pirongia were included in the Pirongia West block and/or has failed to remedy an error in the survey of the Pirongia West block such that Ngāti Hikairo lost land.
170. On the 28 April 1911 Surveyor William Spencer appeared in the Native Land Court and confirmed that while surveying the Pirongia West northern boundary, as agreed by Hōne Te One and others, he made a mistake, and to his calculation had excluded 800 acres from the Pirongia West Block.¹⁶⁴ Unfortunately the presiding judge adjourned the case and there was never any follow-up. As a consequence the boundary remains the same with an awkward triangular shape near the Tahuanui peak of Pirongia maunga.¹⁶⁵ The 800 acres were therefore lost to part of the Moerangi block which was later acquired by the Crown.
171. Ngāti Hikairo believes this error was never remedied.¹⁶⁶

3.5.4 Conclusions

172. It is submitted that all of the examples provided in this section demonstrate the financial pressure that Court and survey costs could generate through the Native Land Court.
173. These costs could grow whether or not a Ngāti Hikairo land owner had participated in a sale or not. The costs were a burden on all the owners, sellers and non-sellers alike.
174. The ultimate outcome was most often the loss of Ngāti Hikairo lands.

¹⁶⁴ *Te Maru-ō-Hikairo*, #A98, p279; see also 52 Otorohanga Minute Book 366-367

¹⁶⁵ *Te Maru-ō-Hikairo*, #A98, p280

¹⁶⁶ *Te Maru-ō-Hikairo*, #A98, p280

3.6 The Pouewe Transaction

3.6.1 Introduction

175. In terms of scale the Pouewe transaction only concerns a relatively small area of about 44 acres. However the claims surrounding Pouewe are very important to Ngāti Hikairo as:

- i. The Pouewe transaction was used by the Crown to justify the opening of the Kāwhia township and the Kāwhia harbour;
- ii. The lands of Pouewe cover the Kāwhia township and include a key Ngāti Hikairo kāinga; and,
- iii. The Crown actively and overtly trampled upon Ngāti Hikairo tikanga and rangatiratanga by asserting a legal title to Pouewe.

176. It is submitted that the Crown was wrong to award the Pouewe block to a settler on the basis of a pre-Treaty transaction with certain Māori because that transaction did not, and could not, convey a permanent and unconditional alienation of the land. At all relevant times before, and after, the transaction was undertaken, the transaction participants operated within an environment of Māori customary law. Yet, the title applicant (a derivative claimant) and the Crown itself, both of whom were not parties to the original customary transaction obtained a title in terms of colonial law.

177. The Ngāti Hikairo claims also question the extent and amount of the lands that were eventually included within the Pouewe transaction. This claim questions why the actual area granted did not conform to what was applied for by the Land Claims applicant. The area in question appears to be an additional 6 acres at the north-western boundary of the Pouewe block and including a traditional site called Pākanae. This aspect of the Pouewe transaction is explored in detail through the Wai 2352 whānau claim by Pipi Barton. That claim covers the Kāwhia Native School and the submissions for that claim have been adopted as a case study herein.

178. These submissions focus on the Pouewe transaction and the Crown's process of inquiry that led to the grant of land.

3.6.2 Pouewe Crown concession

179. The Waitangi Tribunal's Statement of Issues records the Crown's single and only concession in relation to pre-Treaty transactions:

*"The Crown acknowledges that there may have been a failure of process in respect of the hearing of this [Charleton Old Land Claim OLC 1353] claim".*¹⁶⁷

180. Counsel are disappointed that the Crown has couched its concession in such tentative terms. The use of the words "*may have been*" and the focus on a potential failure of "process", ignore the whole issue of whether the customary transaction contemplated a permanent alienation. In the following, we set out the key facts and evidence in relation to the transaction.

3.6.3 Evidence about the Transaction

181. In around 1829 Ngāti Hikairo permitted John Cowell (Senior) to occupy land at the Pouewe Kāinga in Kāwhia on a customary basis, but this did not involve a transfer of the land.¹⁶⁸ John Cowell (Senior) died in about 1839. John Cowell's son, John Vittoria Cowell (Kaora) later claimed a transaction (dated 11 January 1840) for an area of 20,000 acres of land at Kāwhia through a Deed with a Waikato chief called Kiwi.¹⁶⁹

182. Through a second Deed, dated 11 March 1846, J V Cowell later claimed to have transferred a "50 acre" portion of the Kāwhia transaction (at Pouewe) to George Charleton (Kamura). The Pouewe land contained useful harbour frontage for use as a port and/or wharf.¹⁷⁰

183. Charleton initially sought to confirm a legal title through a pre-emption waiver auction process in 1854 and a plan was produced for the Pouewe block that included 38 acres. The auction did not proceed. It appears this was a consequence of opposition from Mata Kaora, the Ngāti Hikairo wife

¹⁶⁷ Statement of Issues, 6 September 2012, #1.4.003, p 55

¹⁶⁸ *Te Maru-ō-Hikairo*, #A98, p235; Boulton, #A70, p122

¹⁶⁹ Boulton, #A70, p122

¹⁷⁰ Boulton, #A70, p122

of J V Cowell.¹⁷¹

184. Charleton brought a claim before the Old Land Claims Commission in 1857 for the Pouewe lands now with a plan showing the land contained 44 acres (a small area in the North-west corner was now included).¹⁷² Pipi Barton has queried the addition of this area and noted its importance to Ngāti Hikairo as the location of Pākanae. She produced the following table demonstrating the inconsistencies in the measurements of the size of the block:¹⁷³

| | |
|---------------|--|
| 1840 | 20,000 acres reportedly purchased by JV Cowell |
| 1846 50 acres | At Pouewe, reportedly given to Charlton by JV Cowell in lieu of a debt incurred |
| 1850 20 acres | Charlton himself hoping to acquire a Crown title for 25 acres, states that he had <i>cultivated upwards of 20 acres</i> ” of the said land, despite eventually being granted a Crown title for 25 acres, for some reason the title was never issued. |
| 1854 38 acres | A plan was forwarded by the Surveyor General which showed the block to contain 38 acres. |
| 1855 38 acres | To be auctioned, but due to protests from Māori the auction was withdrawn. |
| 1855 35 acres | A request to the colonial secretary that 35 acres in the possession of Charlton be put up for sale by public auction. |
| 1857 44 acres | For no recorded reason at this time, now said to contain 44 acres |
| 1858 44 acres | A new survey plan produced reported to have been drafted 5-6 years previously, showed the area as 44 acres. |
| 1864 38 acres | Commissioner Bell recommends a Crown grant for 38 acres be issued to Mrs Charlton |
| 1864 44 acres | Commissioner Domett changes the Crown grant issued to Mrs Charlton to 44 acres |
| 1871 40 acres | Petitioning government Mrs Charlton refers to her Crown grant consisting of 40 acres. |
| 1882 44 acres | The Crown gained title to 44 acres. |

185. The Commission records state that one Ngāti Hikairo witness spoke before the Commission and was alleged to have been present when the survey was undertaken and the additional land added.¹⁷⁴ There was no evidence that Commissioner Bell inquired into the nature of the original transaction between John Cowell and the local Ngāti Hikairo hapū and as to whether a

¹⁷¹ Boulton, #A70, p126

¹⁷² Boulton, #A70, p128

¹⁷³ Barton, #N4, p16

¹⁷⁴ Boulton, #A70, p129

permanent alienation was intended.¹⁷⁵ It is submitted that the approach of the Commission to the additional land suggests the Commission might have seen the evidence of the Māori witnesses as a new contractual basis for a grant to be made.

186. There was no evidence that Commissioner Bell inquired into the nature of the transaction between J V Cowell and Kiwi and as to whether a permanent alienation was intended or why the transaction may have taken place in terms of customary reasons.¹⁷⁶

187. Ngāti Hikairo whānau of Cowell wrote in protest about Charleton's claim in September 1858 and again in October 1858. This suggested that the customary land interests remained with the hapū. In contrast, Commissioner Bell reported on 22 March 1864 (six years after the hearing) and recommended a grant of 38 acres.¹⁷⁷ On 13 July 1864 Domett directed that the Grant be awarded for 44 acres in favour of Charleton's wife (Charleton had died) and the grant was issued on 25 October 1864.¹⁷⁸

188. Charleton's wife was apparently expelled from Kāwhia during the aukati around 1866 and in 1871 she petitioned Parliament for her losses.¹⁷⁹

189. At some time from 1866 the Pouewe land was re-occupied by Ngāti Hikairo and others.¹⁸⁰ In around 1882 Hōne Te One authorised the construction of a flour mill on Pouewe.¹⁸¹

190. The Pouewe grant was then purchased by the Crown at an auction in Auckland in 1880 and a Crown visit to the land in February 1883 was claimed to represent the "opening" of the Kāwhia harbour.¹⁸²

191. The evidence of Tom Moke discussed the importance of the Crown's visit

¹⁷⁵ Boulton, #A70, p129

¹⁷⁶ Boulton, #A70, p129

¹⁷⁷ Boulton, #A70, p130

¹⁷⁸ Boulton, #A70, p129

¹⁷⁹ Boulton, #A70, pp 131-2

¹⁸⁰ Marr, #A78, p716

¹⁸¹ Te Maru-ō-Hikairo, #A98, p227, Moke, #I3, p11; see Auckland Star, 12 July 1882

¹⁸² Marr, #A78, pp 715, 722

to open Kāwhia and how it rested upon the Pouewe transaction.¹⁸³ His evidence demonstrated the strategic significance of Kāwhia harbour for trading, but also the occupation by the Crown was a political message that the aukati was broken.¹⁸⁴ Mr Moke noted how Bryce came to the harbour prepared to enforce the Pouewe title with 114 troops and how this showed that the Crown knew that Ngāti Hikairo contested the Pouewe transaction.¹⁸⁵

192. Mr Moke also noted that despite complaints about the Crown's occupation at Pouewe, the Crown stood fast and in January 1884 the first sections at Pouewe were auctioned, at a profit of £4,000.¹⁸⁶ Mr Moke also suggested that the opening up of the Kāwhia harbour and the Pouewe transaction were significant factors in Ngāti Hikairo joining Te Pitihana.¹⁸⁷

193. As set out in the generic submissions on the Pouewe transaction, the historical record includes a significant number of Māori protests about the alleged purchase of Pouewe as follows:

- i. In 1855, prior to the hearing by Commissioner Bell, Mata Kaora (JV Cowell's Ngāti Hikairo wife) and local hapū contested a proposed auction of the Pouewe land.¹⁸⁸
- ii. Two months following Commissioner Bell's inquiry, Mata Kaora and others wrote to McLean (Native Secretary and Chief Land Purchase Commissioner) in September 1858 to warn him in relation to Pouewe.¹⁸⁹
- iii. A further letter of protest followed to McLean in October 1858 from Wiremu Toetoe Tūmohe and Mata Kaora in which it was noted that the land was for their whānau.¹⁹⁰
- iv. Later, around the opening of Kāwhia harbour and the Crown's

¹⁸³ Moke, #I3, p6

¹⁸⁴ Moke, #I3, p12

¹⁸⁵ Moke, #I3, p12, 16

¹⁸⁶ Moke, #I3, p17

¹⁸⁷ Moke, #I3, p18

¹⁸⁸ Document #A70, p91

¹⁸⁹ Document #A70, p129

¹⁹⁰ Document #A70, p130

assertion of ownership of Pouewe, Hakopa Kotuku and Wiremu Nera Te Awaitaia wrote to Chief Judge Fenton requesting an inquiry into the Pouewe block transaction.¹⁹¹

- v. Hōne Te One of Ngāti Hikairo protested about the Pouewe transaction directly to Minister Bryce during his visit to Kāwhia in 1883.¹⁹²
- vi. There was a Petition of King Tāwhiao and others of July 1884 which claimed that Māori had signed the Cowell Kāwhia Deed anticipating it would secure a lease rental, but not understanding it meant a transfer of the land.¹⁹³
- vii. In 1899 Tūteao Kiwi and 5 others petitioned the Crown alleging that Mrs Charleton had no right to sell the Pouewe lands to the Crown.¹⁹⁴
- viii. A further complaint from 1979 is set out in the tangata whenua evidence of Ms Barton before this Tribunal.¹⁹⁵
- ix. The Tainui Māori Trust Board claim, Wai 17, also raised the issue and made protest.¹⁹⁶

194. There is no evidence that the Crown addressed any of these concerns about the Pouewe transaction.¹⁹⁷

3.6.4 Conclusion

195. Ngāti Hikairo strongly contest the validity of the Pouewe title obtained by the Crown. They assert that the transaction was conducted in terms of tikanga Māori and kawa. The customary transaction was not capable of transferring a permanent and unconditional legal title to the Crown through Mrs Charleton.

¹⁹¹ Marr, #A78, p718 letter, dated 26 December 1882

¹⁹² See Waikato Times, 9 October 1883

¹⁹³ O'Malley, #A22, p739

¹⁹⁴ Reports of Native Affairs Committee 1900, No 294, 1899

¹⁹⁵ Document #N4, p15

¹⁹⁶ Document #A98, p238

¹⁹⁷ Waitangi Tribunal Statement of Issues, p55

196. It has been argued that the Crown used the Pouewe transaction to justify the opening of the Kāwhia township and the Kāwhia harbour. This 44 acre title became a lever for the Crown to break the aukati within Kāwhia.

197. By taking the title to Pouewe and ignoring Ngāti Hikairo protest, the Crown applied its own laws to a transaction that occurred prior to the Treaty and under Māori customary law. This was despite Ngāti Hikairo continuing in occupation on the lands and continuing with practical control, under Māori custom, well after 1840. It was also despite numerous Ngāti Hikairo complaints.

3.7 Native Townships – Te Puru and Te Papa-o-Kārewa

198. Ngāti Hikairo have a number of claims relating to the Native Townships that were established on their whenua. They can be summarised as follows:

- i. The Crown took almost complete control over their lands within the Townships;
- ii. The Crown didn't set aside enough of the Township lands as reserves for the use of Ngāti Hikairo;
- iii. The Crown imposed the Townships on Ngāti Hikairo without adequate consultation;
- iv. The Crown took lands for roads and reserves without paying compensation to the Ngāti Hikairo owners;
- v. The Crown failed to protect Ngāti Hikairo's wāhi tapu and other special sites within the Townships; and,
- vi. The Crown passed law that allow the Māori Trustee to compulsorily purchase "uneconomic shares" from the Ngāti Hikairo owners.

199. In the following we discuss some background to the Townships before canvassing the evidence that supports these claims.

3.7.1 Crown policies and the Native Townships Act 1895

200. It is submitted that the key points made by the technical witnesses in relation to the Townships policies and legislation are as follows:

- i. The Native Townships Act was designed to allow townships to be established on Māori land where the owners were refusing to sell the freehold to the Crown or settlers.¹⁹⁸
- ii. The Native Townships Act 1895 aimed to extend Crown control over Māori land, and facilitate the spread of Pākehā settlement.¹⁹⁹
- iii. The Native Townships Act allowed for an area of up to 500 acres to be proclaimed as the site of a Native Township, without any requirement under the Act to gain the prior consent of the owners. Under the Act, the legal ownership and all authority was vested in the Crown, while the owners were reduced to the status of beneficial owners.²⁰⁰
- iv. There was no requirement written into the Act that Māori consent had to be sought before the Governor proclaimed an area as a Native Township.²⁰¹
- v. The Act did not contain any provisions ensuring that mahinga kai or Māori cultivation areas were included in the Native Reserves.²⁰²
- vi. Under the Act full legal authority over the native township passed to the Crown. Even the reserves intended for Māori were vested in the Crown for administration, rather than letting Māori continue to occupy and control them.²⁰³
- vii. Legislation was enacted which further precipitated the position of Māori under the Native Townships Act. The Native Land Court Act 1894 forbade the purchase of Māori land by private individuals, and re-imposed Crown pre-emption. The Lands Improvement and

¹⁹⁸ Bassett #A62, p342

¹⁹⁹ Bassett #A62, p20

²⁰⁰ Bassett #A62, p344

²⁰¹ Bassett #A62, p25

²⁰² Bassett #A62, p25

²⁰³ Bassett #A62, p27

Native Lands Acquisition Act 1894 authorised the Crown to raise funds for the purchase of Māori land, along with the construction of roads and railways to access those lands.²⁰⁴ While Māori retained beneficial ownership of native townships on paper, the Act took away any ability or opportunity for Māori to continue to exercise their tino rangatiratanga over their lands.²⁰⁵

- viii. Under the Native Township Act 1910 the Board controlling the lands were able to grant perpetual leases.²⁰⁶
- ix. According to Bassett *“Although they were called ‘Native’ townships, the real purpose was to create Pākehā towns”*.²⁰⁷
- x. The Sheehan Commission and subsequent inquiries were strongly critical of the Māori Trustee administration and recommended that control should be returned to the owners. During the Māori Trustee’s period of management lot valuations were often forgotten so that the lease rentals were left far too low for too long. Many lots could not be leased and some were occupied without rental payment.²⁰⁸

3.7.2 Establishment of Te Puru and Kārewa Townships

201. The Crown established two Native townships on certain Kāwhia blocks under the Native Townships Act 1895. These were the Kārewa and Te Puru Native Townships. They are shown in the map below positioned either side of the town of Kāwhia and the Kāwhia P block.

202. The evidence of Bassett was that in March 1901 Hōne Kaora and others petitioned the Minister of Lands for Kāwhia M to become a site for a township. Mr Moke stated that his whānau kōrero was clear that Hōne Kaora:

“[...] wasn’t asking for a “Native Township”, rather he sought to have Ngāti Hikairo provide and own the lands for the town. He was trying to protect his

²⁰⁴ Bassett #A62, p20

²⁰⁵ Bassett #A62, p27

²⁰⁶ Bassett #A62, pp 147, 319

²⁰⁷ Bassett #A62, p342

²⁰⁸ Bassett #A62, pp 347-350

lands and the commerce that he had grown up with and which had helped his people."²⁰⁹

203. Bassett is clearly in full agreement stating:

"While they requested assistance to form a township, they specifically rejected the conditions of the Native Townships Act, particularly the vesting of the land in the Crown".²¹⁰

204. Nevertheless, in September 1902 the Crown established the Kārewa Township out of the Kāwhia M2 Block, otherwise known as the Papa-o-Kārewa block of (37 acres).²¹¹ From 1952 the Waikato Maniapoto Māori Land Board vested the Kārewa Township in the Māori Trustee. The Māori Trustee remains in control of various sections in the Kārewa Township.²¹²

205. In October 1901 Te Puru Township (of 23 acres) was established. This was the Kāwhia K2 Block.²¹³ In 1912 the Crown purchased the entire Te Puru Township, of 23 acres.²¹⁴ Once, roads and reserves are removed from the equation (they were already taken at no cost), the Crown only had to pay for about 65% of the block to purchase it in full.²¹⁵ One section was returned however in 1990 (being the Section 35, Block II Te Puru Township, of 1.69 hectares). The claims relating to this section (which used to be the Kāwhia hospital) are covered in the closing submissions and claims of Pipi Barton, Wai 2352, and her evidence.²¹⁶

²⁰⁹ Moke, #N37, pp 3-4

²¹⁰ Bassett #A62(b), p3

²¹¹ Bassett #A62, pp 69, 74

²¹² Bassett #A62, p285

²¹³ Bassett #A62, pp 82, 84

²¹⁴ Bassett #A62, p8

²¹⁵ Bassett #A62(b), p6

²¹⁶ Barton #N4, pp 33-35



3.7.3 A lack of consultation

206. It is submitted that the Crown established the native townships without any proper consultation with Ngāti Hikairo. Indeed, when the Kārewa Native

Township was proclaimed in September 1902, the Ngāti Hikairo owners complained that they had not agreed to the conditions of the Native Townships Act. Rather,

*“the requests for Crown assistance [in the petition of Hōne Kaora] were taken as ‘voluntary’ consent to a Native Township”.*²¹⁷

207. It is submitted that when the surveyor completed the Township map at Kārewa, the Ngāti Hikairo owners asserted an unequivocal condition that the Crown was required to preserve the sacred Pōhutukawa trees on the Township site and the trees were plotted on the plan.²¹⁸ It is also submitted that whether or not the Crown was legally bound to such a condition, the Treaty required the Crown to protect the taonga of the iwi. It is submitted that from the perspective of the Ngāti Hikairo owners they would likely have felt the condition would be honoured by the Crown, particularly as the trees were noted specifically on the plan. Certainly, the surveyor was careful to report the condition when he submitted the plan.²¹⁹ This matter is covered in greater detail in the environment section of these submissions in relation to the protection of the Pōhutukawa and the subsequent loss of many of them.

208. Soon after the proclamation Hōne Kaora told the Premier that he objected to the land being taken as a Native Township and members of the Morgan/Forbes whānau consistently said that they had not given consent.²²⁰ The owners made objections to the survey plan, requesting more reserves, but the objections were dismissed by the Crown.²²¹

209. Mr Moke gave evidence that there was anger among Ngāti Hikairo when the local Council formed the road along the harbour’s edge at Paringatai. This was done without consultation with the Ngāti Hikairo owners. He noted that fresh water springs along this area of the road were covered and never found again.²²²

²¹⁷ Bassett #A62(b), p3

²¹⁸ Bassett #A62, pp 74-5

²¹⁹ Bassett #A62, p74

²²⁰ Bassett #A62(b), p3

²²¹ Bassett #A62, p347

²²² Moke, #N37, pp 5-6

210. Also, Ngāti Hikairo have felt that development on their lands goes on without their consent or involvement:

*“During this time we have seen numerous buildings erected without our consent (often apparently without local body consent too)”.*²²³

3.7.4 The Crown took over the management of Ngāti Hikairo’s lands

211. As noted above, once the land was proclaimed as a Native Township Ngāti Hikairo were excluded from all decision-making in relation to the lands.²²⁴

Bassett put it this way:

*“The Crown became the legal owner, with complete legal authority, while Māori were reduced to the status of beneficial owners”*²²⁵

212. Mr Moke described the degree of control with the owners:

*“We have not been landlords in the usual sense as the Māori Trustee has been running most of our lands in the Township for many years”.*²²⁶

213. Bassett noted that for Kārewa, parts of the Township had been under the control of the Crown for over 100 years.²²⁷

214. Mr Moke pointed out that the Crown took control of their lands and their wāhi tapu saying that a “[...] result of the Native Township was that the Crown took control of our special sites at Te Papa-o-Kārewa”.²²⁸ He noted that a number of special sites had been lost during the course of the Crown’s management, such as three tomo and some springs on the coast, and various sacred Pōhutukawa (this is discussed in the environment section).²²⁹

215. Mr Moke also discussed a site where there is a special memorial resting in the garden of a lessee. The site is a memorial in relation to an important tupuna who lost blood there and died.²³⁰ Mr Moke was very concerned as:

²²³ Moke, #N37, p5

²²⁴ Bassett #A62(b), p7

²²⁵ Bassett #A62(b), p7

²²⁶ Moke, #N37, p5

²²⁷ Bassett #A62(b), p7

²²⁸ Moke, #N37, p5

²²⁹ Moke, #N37, p4

²³⁰ Moke, #N37, p4; *Te Maru-ō-Hikairo*, #A98, pp 304, 307

*"We have no control over what the owners do at this site and we remain concerned that one day it will be removed".*²³¹

3.7.5 Perpetual leases and rentals

216. Under the Native Township Act 1910 the Board controlling the lands were able to grant perpetual leases and a large number were established in the Kārewa Township.²³²

217. In relation to these leases Mr Moke stated:

*"The Crown gave a series of favourable and perpetual leases to Pākehā leaving us as deprived and poor landlords. For many years we saw very little from the lease rentals – they were peppercorn rentals".*²³³

218. Mr Moke was aware of changes to the rentals following the Maori Reserved Land Amendment Act 1997 and a 2002 settlement linked to that Act. This saw the rentals change from peppercorns to market rentals. He complained that the settlement gives the owners only 21 days' notice if a lessee decides to sell and the owners have to purchase the improvements. He noted that *"Our people just can't afford to do this"*.²³⁴

219. As a consequence of the difficulties in purchasing the lessee's interests, Ngāti Hikairo only own a few sections in the Township in full title.²³⁵

3.7.6 The Crown did not set aside enough reserves for Ngāti Hikairo

220. The Crown failed to set aside sufficient reserves out of Te Puru and Kārewa townships for Ngāti Hikairo. Under the provisions of the Native Townships Act, up to 20 percent of the area of any Native Township could be set aside as native reserves.²³⁶ There were requests from Ngāti Hikairo owners for more reserves to be set aside in Kārewa Native Township but these were ignored by the Crown, with the requested reserves becoming

²³¹ Moke, #N37, p5

²³² Bassett #A62, pp 147, 319

²³³ Moke, #N37, p5

²³⁴ Moke, #N37, p6

²³⁵ Moke, #N37, p6

²³⁶ Bassett #A62, p83

Crown lands.²³⁷

221. In Kārewa Townships 7 acres out of 55 were set aside as Native Reserves, which was equivalent to 13 percent of the total area.²³⁸

222. In Te Puru a total area of 2 acres 1 rood 37 perches of Native Reserves were set aside out of the 23 acres 3 roods 37 perches of Kāwhia K2 block. This represented approximately 10 percent of the area of the township.²³⁹

3.7.7 The taking of roads and reserves without compensation

223. The Crown took land for roads and reserves out of the Townships and did not pay any compensation to the owners. Under the Native Townships Act, all streets were deemed to be vested in the Crown in fee simple, as roads within the meaning of the Public Works Act 1894 without any payment or compensation to Māori owners.²⁴⁰ Also, under the Act all public reserves (not Māori reserves) were deemed to be vested in the Crown in fee simple for the specified purposes and dealt with as reserves under the Public Reserves Act 1881 without any payment or compensation to Māori owners.²⁴¹

224. In the Kārewa Native Township the amount of land taken in laying out roads, 17 acres 2 roods 11 perches, accounted for almost a third of the area of the township.²⁴² In Te Puru Native Township, the Crown declared 1 acre 2 roods and 25 perches as Crown reserves and acquired 7 acres as roads. The practical effect of this was that the Crown acquired 35 percent of Te Puru Township without any payment or compensation to Ngāti Hikairo owners of land in the Township.²⁴³

225. In addition, 2 acres were set aside as 9 public reserves out of the Kārewa Native Township, again without payment to the owners. Of these 9 public reserves only 2 were actually used for public purposes. In Te Puru

²³⁷ Bassett #A62, p81

²³⁸ Bassett #A62, p345

²³⁹ Bassett #A62, p346

²⁴⁰ Bassett #A62, p26

²⁴¹ Bassett #A62, p26

²⁴² Bassett #A62, p352

²⁴³ Bassett #A62(b), p6

Township 1.5 acres was set aside as reserves.²⁴⁴

3.7.8 The Māori Trustee and Township “uneconomic shares”

226. Following the enactment of the Māori Affairs Amendment Act 1967 the Māori Trustee was permitted to compulsorily purchase “*uneconomic shares*” with the effect that some Ngāti Hikairo lost their interests in land.

227. Indeed, between 1970 and 1974 the Māori Trustee purchased the “uneconomic interests” of 21 Ngāti Hikairo owners in the Kārewa township. In 1974 the Māori Trustee still held (0.1593 out of 91.9146 shares) in Kāwhia M2P11 and 7.7591 out of 139.1017 shares of Kāwhia M2P12.²⁴⁵

3.7.9 Conclusions

228. It is submitted that when Hōne Kaora and others approached the Crown about opening up a township on their lands they were looking to work with the Crown to grow the town and to play a role as owners in the resulting commerce. They were clear that they did not want a Native Township, but the Crown nevertheless took their request as consent to take the lands at Kāwhia K2 and Kāwhia M2 blocks and establish them as Native Townships. These townships were not about a Crown/Māori partnership, they were simply another way of creating Pākehā towns and taking control of the lands when the Māori owners refused to sell.

229. It is sad to note that within the first ten years of the Native Townships that Hōne Kaora, who had initially sought Crown assistance to establish a town, was seeking half of the township rents as his whānau were short of food.²⁴⁶

230. From the establishment of the Townships Ngāti Hikairo lost all their rights as owners to become beneficiaries to a Crown-run process. The Crown decided how much land they would obtain as reserves to live on (and then gave them minimal amounts and certainly less than they requested), the

²⁴⁴ Bassett #A62(b), p6

²⁴⁵ Bassett #A62, p279

²⁴⁶ Bassett #A62, pp 81-2, 91

Crown designed the township plans (that would lead to the destruction of special sites and wāhi tapu), the Crown created perpetual leases at peppercorn rentals, and the Crown took what lands it pleased for public reserves and roads at Ngāti Hikairo's cost (and at Kārewa being significantly more than was needed).

3.8 Local Government, rates, and the Māori Trustee

3.8.1 Introduction

231. This section addresses the activities of local government in relation to rates and with applications to vest Ngāti Hikairo lands in the Māori Trustee.

232. Under part 3 of the Māori Purposes Act 1950 and Part 25 of the Māori Affairs Act 1953 (prior to that, section 540 of the Native Land Act 1931) Local Government authorities could apply to the Māori Land Court to have Māori land vested in the Māori/Native Trustee. Once vested, the Māori Trustee had full authority over the land including the power to alienate that land.²⁴⁷

233. An application to the Māori Land Court could be made by a Council where there were unpaid rates or where the lands were not cleared of noxious weeds.²⁴⁸ The technical evidence was that Local Government members had lobbied central government vigorously for an expansive provision to provide for the alienation of Māori-owned land so that it could, in their view, be productive and rateable.²⁴⁹

234. Ms Luiten considered that the Kāwhia County Council used its power to make applications to have the Māori Trustee vested as agent for the owners to assert pressure on Māori landowners to sell and then to act like a real estate agent and their behalf.²⁵⁰

²⁴⁷ Luiten #A24, p,226

²⁴⁸ Bassett & Kay, #A75, p226; Luiten, #A24, pp 226, 227

²⁴⁹ Luiten #A24, pp 219, 437-451; Luiten lists applications by local government authorities for orders in blocks where Ngāti Hikairo has customary interests. Not all were successful

²⁵⁰ Luiten, #A24, p261

3.8.2 Application to Ngāti Hikairo lands

235. Between 1952 and 1954 the Māori Land Court heard various applications of the Kāwhia County Council in relation to certain Kāwhia blocks seeking management by the Māori Trustee because of unpaid rates and weed infestations and because they were unoccupied. The Court made orders, in some cases with the owners' present, in relation to Kāwhia A2D1, B2B, the amalgamated R2C1, T2s3A, T2s3B and W1.²⁵¹ In March 1954 the Māori Land Court amalgamated a group of the blocks into a single block for management by the Māori Trustee. The amalgamated blocks were Kāwhia R2A9, R2A2, P83A1, P83A2, P83B, P84B, P85B, G2A, M1s2B. The amalgamation was called the Kāwhia R2C1 Block (307a 3r 15p) and the management was passed to the Māori Trustee for the period of approximately 1955 to 1965.²⁵² On 5 December 1963, and during the period of the Māori Trustee management, part of the lands were compulsorily cut out of the Kāwhia R2C1 Block and amalgamated within the Tainui Kāwhia Incorporation of 2,616:0:11 acres.²⁵³ The Kāwhia A2D1 block remains under the control of the Māori Trustee today.
236. An application in relation to the Motukōtuku block by the Kāwhia County Council is covered in the case study section of these submissions for that block. The application was struck out because the property was sold.²⁵⁴
237. In 1954 the Māori Land Court heard various applications of the Kāwhia County Council in relation to certain Pirongia West Blocks seeking management by the Māori Trustee due to unpaid rates. In those cases the Court made orders, with agreement of the owners present, in relation to the Pirongia West 1s2A, 1s2B3A1, 1s2B3A2, 1s2B3B, 1s2B3C, 3B2D, and 1s2F1B2B.²⁵⁵ As discussed in the Land Development Scheme section, the Māori Trustee later proposed that some of the lands be included within the Ōpārau Land Development Scheme.

²⁵¹ Luiten, #A24, pp 444-446.

²⁵² Bassett & Kay, #A75, pp 299, 425; Luiten, #A24, p273; Berghan, #A60, pp277, 285, 288

²⁵³ Cleaver, #A25, p179; Bassett & Kay, #A75, p358; Berghan #A60, p1070

²⁵⁴ Luiten, #A24, pp 261, 449

²⁵⁵ Luiten, #A24, pp 450-1; Bassett & Kay, #A75, p306

3.8.3 Rates

238. The central focus of the Ngāti Hikairo claims in relation to local authority rates is that it created an “unfair burden” on the people. There was evidence in this inquiry that the failure to pay rates led to the alienation of Ngāti Hikairo land. For example, the examples of the local Country Council applications in the 1950s to have the Māori Trustee take over land management all related to unpaid rates. Some of those applications resulted in alienations of land. It can be seen therefore that from an early point the imposition of rates was causing difficulties for some Ngāti Hikairo.

239. The evidence of Kīngi Pōrima highlighted difficulties among the whānau in Kāwhia in paying council rates. He pointed to an example where a whānau member could not pay their rates in the 1970s and he suspected that the subsequent land alienation was to pay such rates arrears.²⁵⁶

240. Mr Pōrima stated:

*“I believe that the rates bills put a lot of pressure on our whānau in that time. The rates were piling up, but our people were struggling to earn enough.”*²⁵⁷

3.9 Ōpārau Land Development Scheme

3.9.1 Introduction

241. This part of the submissions is intended to specifically support the Wai 1439²⁵⁸ Statement of Claim and the Ōpārau Trust claimants along with the Ngāti Hikairo iwi claims. The submissions focus on the Ōpārau Land Development Scheme, but also briefly cover the Pirongia Land Development Scheme (also known as the “Kopua Development Scheme”) as it included the Mangauika 1B1 block.

242. The evidence of Mr Albert Kewene, Chairman of the Ōpārau Trust

²⁵⁶ Pōrima, #N29, p7

²⁵⁷ Pōrima, #N29, p7

²⁵⁸ Dated 9 December 2011

succinctly outlined the claims against the Crown in relation to the Ōpārau Land Development Scheme. He said:

- i. *“The Crown took full control over our lands and failed to properly consult with us over its management;*
- ii. *When the Crown returned our lands it also gave us a large debt;*
- iii. *When the Crown returned the station is was in a poor state and we are still trying to get the land into a good basic shape; and,*
- iv. *While the Crown ensured that a local Pākehā had legal access across to their land across ours, the Crown failed to ensure that we had legal access to our Tiritirimatangi motu”.*²⁵⁹

243. In the following we summarise the key events and information surrounding the establishment of the Ōpārau Land Development Scheme and outline the evidence in support of the above claims.

3.9.2 Summary of Scheme

244. The evidence before this Tribunal is that County Councils were pursuing rates arrears and seeking to combat apparent weed infestations on Māori land. There were various applications under Part 3 of the Māori Purposes Act 1950 and Part 25 of the Māori Affairs Act 1953 before the Native Land Court throughout the early 1950s. The Kāwhia County Council made applications in relation to some of the Pirongia West blocks that would be included in the Ōpārau Land Development Scheme.²⁶⁰ It appears the owners were behind with rates payments following the end of a lease to Beatson and weeds may have been building up on the lands in question.²⁶¹ On 21 January 1953 the Native Land Court appointed the Māori Trustee to administer the lands.

245. While under the control of the Māori Trustee the lands were proposed for a Land Development Scheme. At a hui over 13 and 14 December 1954 the owners present agreed to the inclusion of the following blocks within the Ōpārau Land Development Scheme and it was proclaimed under Part XXIV of the Maori Affairs Act 1953.²⁶²

²⁵⁹ Kewene, #N33, p11

²⁶⁰ Luiten, #A24, pp450-451

²⁶¹ Pouwhare, #N34, p2; Kewene, #N33, p8

²⁶² Hearn, #A69, p459

| Blocks | Acres | Number of owners | Government capital value: £ |
|---------------------------|-------------|------------------|-----------------------------|
| Pirongia West 1A | 352 | 59 | 475 |
| Pirongia West 1 Sec 2A | 290 | 16 | 885 |
| Pirongia West 1 Sec 2B3A2 | 124 | 5 | 340 |
| Pirongia West 1 Sec 2B3B | 124 | 2 | 295 |
| Pirongia West 1 Sec 2G2A | 34 | 1) | |
| Pirongia West 1 Sec 2G2B | 135 | 1) | 1340 |
| Pirongia West 1 Sec 2G2C | 135 | 1) | |
| Pirongia West 1 Sec 2G1 | 103 | 1 (Pakeha) | 300 |
| Te Kauri 2F2C | 115 | 5 | 260 |
| | 1411 | | 2695 |

246. The Scheme was managed by the Department of Māori Affairs. Later on 11 August 1959 the Māori Land Court amalgamated various blocks within the Ōpārau Development Scheme (the Pirongia West 1s2A, 1s2B3A2, 1s2B3B, 1s2G1, 1s2G2A, 1s2G2B, 1s2G2C, 1A, and 4 (Te Kauri Kāwhia) Blocks). The amalgamation was called the Ōpārau Block (of 1,389:2:19 acres).²⁶³

247. The Crown purchased various blocks around the Ōpārau Development Scheme and they were formally consolidated into the Ōpārau Block on 4 June 1968 and the Ōpārau Block was then 2,048:3:00 acres.²⁶⁴ The Ngāti Hikairo owners had to purchase the interests acquired by the Crown on conclusion of the Scheme.²⁶⁵

248. In summary the evidence is that the Ōpārau Development Scheme originally included:²⁶⁶

- (i) Pirongia West 1A of 352 acres 59 owners
- (ii) Pirongia West 1 Sec 2A of 290 acres with 16 owners
- (iii) Pirongia West 1 Sec 2B3A2 of 124 acres with 5 owners
- (iv) Pirongia West 1 Sec 2B3B of 124 acres with 2 owners
- (v) Pirongia West 1 Sec 2G2A of 34 acres with 1 owner
- (vi) Pirongia West 1 Sec 2G2B of 135 acres with 1 owner
- (vii) Pirongia West 1 Sec 2G2C of 135 acres with 1 owner
- (viii) Pirongia West 1 Sec 2G1 103 acres with 1 owner (Pākehā)
- (ix) Te Kauri 2F2C of 115 acres with 5 owners

²⁶³ Berghan, #A60, p607; Hearn, #A69 p461

²⁶⁴ Berghan, #A60, p607; Hearn, #A69 p461

²⁶⁵ Hearn, #A69, p518; Berghan, #A60, p607

²⁶⁶ Hearn, #A69, p459

249. Later the Crown added the following blocks to the Scheme:²⁶⁷

- (i) Pirongia West 1 Sec 2H4, 2H5, & 2H6 of 79 acres
- (ii) Part Pirongia West 1 of 32 acres
- (iii) Pirongia West 1 Sec 2B3A1, Te Kauri 2F1, and Part Pirongia West 1 of 168 acres.

250. The Ōpārau Development Scheme made a low rate of farm return on capital (4.5%).²⁶⁸ In particular during the 1979 to 1980 years the Ōpārau Development Scheme had a surplus earning of \$49,879 which represented an approximate return on capital of 4.5%.²⁶⁹ By June 1980 the Ōpārau Block was valued at \$1,044,702 and had \$179,179 total debt against the farm giving the owners' equity at around \$865,523 or a debt to equity ratio of 17%.²⁷⁰

251. At the conclusion of the Ōpārau Development Scheme there was a debt of \$397,262 against the Ōpārau Station. The Crown agreed to write-off \$285,662, leaving the owners with a remaining debt of \$111,600.²⁷¹

252. The Ōpārau Block was managed by the Crown from 1955 and was not returned to its owners until 1989-1990.²⁷²

253. The Ōpārau Trust now manages the land for the 190 beneficial owners and it contains over 830 hectares.²⁷³

3.9.3 The Crown took over control of the Ōpārau Development Scheme lands and failed to properly consult with the owners over its management

254. Under the Ōpārau Land Development Scheme, the Māori owners had to accept:

- “[...] *the suspension of all the rights of ownership for an undefined period;*

²⁶⁷ Berghan, #A60, p607; Hearn, #A69 p461

²⁶⁸ Hearn, #A69 p484;

²⁶⁹ Hearn, #A69, p484

²⁷⁰ Hearn, #A69, p483

²⁷¹ Hearn, #A69 p487

²⁷² Hearn, #A69, p461

²⁷³ Kewene, #N33, pp2-3

- *that the Crown would make all investment and expenditure decisions without any right of consultation; the imposition of a charge to cover all expenditure;*
- *The imposition of interest charges on development expenditure; a liability to repay all development expenditure;*
- *the risk of loss of land on account of decision-making over which they had no control; and*
- *the possibility that their lands might pass into the hands of nominated occupiers not of their whānau or hapū”.²⁷⁴*

255. Accordingly, while Ngāti Hikairo individuals retained the ownership of their lands in the Ōpārau Development Scheme they were unable to exercise any of the usual rights associated with ownership – their ownership rights were displaced by the Crown’s authority. Counsel submit that the Crown, or the Crown’s agent, for over 35 years took over ultimate management of Ōpārau Development Scheme Lands to the near full exclusion of the land management rights of the Ngāti Hikairo and other landowners.²⁷⁵

256. The evidence of Mr Moke was that his whānau didn’t recall having any say in the management of their land within the Ōpārau Development Scheme from the mid-1950s to the late 1980s.²⁷⁶

257. This evidence aligned with the statements of Mr Kewene who was an owners’ representative for the Ōpārau Development Scheme during the 1970s. He gave evidence that there was poor consultation, if any, with owners and little engagement with owners in both management and farming operations.²⁷⁷ Mr Kewene noted that no bookwork was put before the owners’ representatives nor was there any consultation in relation to the purchase of additional land for the station.²⁷⁸

258. Besides the poor rates of return on the Scheme in general the owners saw no returns and little employment for local Māori.²⁷⁹

259. Mr Kewene has also given evidence how the amalgamation of the various

²⁷⁴ Hearn, #A69, p181

²⁷⁵ Kewene, #N33, p11

²⁷⁶ Moke, #N37, p9, para 36(i)

²⁷⁷ Kewene, #N33, p5

²⁷⁸ Kewene, #N33, p6

²⁷⁹ Kewene, #N33, p7

blocks into the Ōpārau Block brought whānau of different whakapapa lines together in the same block.²⁸⁰ Indeed, counsel note that the Wai 1439 claim itself is made on behalf of Ngāti Maniapoto and Ngāti Hikairo owners. Mr Moke noted in his evidence that:

*“The amalgamation brought together various different whānau and hapū into the same title and ownership structure. We went from being whānau owners of the majority interest in the original block to being shareholders in a not much larger block alongside others we did not know”.*²⁸¹

3.9.4 When the Crown returned the station it also returned a large debt.

260. The evidence was that the Crown, under pressure from owners, decided to write-off part of the debt as there was concern that the owners would receive farms with high debt levels and limited income, combined with tax liabilities. By 1990 the Ōpārau Development Scheme lands had a total debt of \$397,262 from which the Government agreed to write-off \$285,662 leaving a residual debt of \$111,600.²⁸²

261. Nevertheless, the Ngāti Hikairo witnesses raised concerns that the Crown returned the Ōpārau Station with a large debt.²⁸³

3.9.5 The Crown returned the Ōpārau Station in a poor state

262. The claimants have raised concern about the state of the Ōpārau land upon return to Māori. This claim is marked by the irony that the Crown initially took control of the Ōpārau lands on the basis of poor Māori land management leading to rates arrears and weed problems.

263. The evidence before this Tribunal is that when the lands were finally returned to the owners, after over 35 years of Crown (or Crown agent) management, there were fencing issues, poor water quality for the stock, poor water reticulation, weeds, and poor quality pasture.²⁸⁴

²⁸⁰ Kewene, #N33, p3

²⁸¹ Moke, #N37, p9; Pouwhare, #N34, p3;

²⁸² Hearn, #A69, p487

²⁸³ Moke, #N37, p9

²⁸⁴ Kewene, #N33, p8

264. Dr Hearn noted that “*poor management*” of the Ōpārau Scheme “*resulted in the reversion of the land and considerable financial loss*”.²⁸⁵ It is submitted that the evidence supports the Claimants’ view that the land was returned in a poor state.

3.9.6 The Crown failed to protect the access to Tiritirimatangi Island

265. A pressing issue for the Ōpārau Trust is the lack of legal access to part of the Ōpārau Station. The Trust does not have practical legal access to an area of about 290 acres known as Tiritirimatangi or Pirongia West 1 Sec 2A.²⁸⁶

266. The Tiritirimatangi land is a very sacred site for Ngāti Hikairo.²⁸⁷ The claimants have given evidence that the lack of access affects their whole farming programme.²⁸⁸

267. The claimants assert that the Crown failed to confirm legal access to this part of the station over the Pākehā-owned Pirongia West 2B3D block. In contrast they allege that the Crown did conclude a legal access to this same Pirongia West 2B3D block over the Māori-owned Ōpārau Station land.²⁸⁹

268. In relation to access to Tiritirimatangi the claimants gave evidence that an access way was formed across Pirongia West 2B3D and was the subject of a fencing agreement between the parties. A plan was drawn up approved at the local Council level and lodged with the Land Transfer Office in 1985, but the evidence is that it was still never actually formalized as a legal easement.²⁹⁰ This access way had been used for some time until there was a change of ownership for the Pirongia West 2B3D block and access was stopped.²⁹¹ The evidence of Mr Pouwhare noted that the owners went through a lot of trouble to get the access way ready by

²⁸⁵ Hearn, #A69(a), p14

²⁸⁶ Kewene, #N33(b), p3

²⁸⁷ Kewene, #N33, p8; Pouwhare #N34, p3; B Moke, #N35, p2

²⁸⁸ Kewene, #N33, p9

²⁸⁹ Kewene, #N33, p9

²⁹⁰ Kewene, #N33(b), p4

²⁹¹ Kewene, #N33, p9

removing burials.²⁹²

3.9.7 Taumata Atua

269. The witnesses also gave evidence about an important taonga found at Tiritirimatangi called Taumata Atua. They described how this was an important taonga relating to the Tainui waka and was of great spiritual importance and antiquity. The evidence highlighted how it was found and ended up in a museum. The witnesses noted that this taonga had actually been placed at Tiritirimatangi for special reasons and had been carefully hidden, rather than lost.²⁹³ Mr Pouwhare considered that Taumatua atua should be returned.²⁹⁴

270. The witnesses acknowledge that the matter of the access to Tiritirimatangi is presently before the courts. Counsel nevertheless seek a finding in relation to Treaty principles that the Crown's management of the Ōpārau Land Development Scheme failed to rectify the problem of access to Tiritirimatangi. Obviously, the Courts will not make a determination about whether the activities of the Crown were Treaty consistent.

3.9.8 Pirongia Land Development Scheme

271. The Pirongia Land Development Scheme, also termed the 'Kopua Development Scheme', included the Mangauika 1B1 block of 291 acres. The owners of the block appear to have formally agreed to the inclusion of their land in the scheme in 1936 alongside certain adjoining Whakairoiro block lands.²⁹⁵ In June 1937 the Mangauika 1B1 and Whakairoiro 5C2B2 and 5C2C blocks were amalgamated.²⁹⁶ These lands appear to have been "[...] allocated to Emma Tawhai, Karena Tamaki, Tapatahi Erueti, Tiaki Tamaki, and Thomas Tamaki" and subsequently Hōne Pene was granted a lease for period.²⁹⁷ By 1938 the Pirongia Development Scheme

²⁹² Pouwhare, #N34, p3

²⁹³ Pouwhare, #N34, p4; B Moke, #N35, pp 3-4

²⁹⁴ Pouwhare, #N34, p4

²⁹⁵ Hearn, #A69, p251

²⁹⁶ Berghan, #A60, p453

²⁹⁷ Hearn, #A69, p251

included 1,626 acres upon which 12 settlers had been established.²⁹⁸

272. Dr Hearn queried whether the scheme units were too small and essentially uneconomic given the large capital inputs.²⁹⁹

273. Berghan's Block history evidence states that the amalgamated Mangauika 1B1 & Whakairoiro 5C2C1 block of about 104 acres and the Mangauika 1B1 & Whakairoiro 5C2C2 block of about 183 acres were "Europeanised" under Part 1 of the Māori Affairs Amendment Act 1967.³⁰⁰

3.9.9 Conclusion

274. The Crown, or its agent, managed the Ōpārau Land Development Scheme for over 35 years and throughout this period the owners lost all rights of use and management. It is ironic that the land was initially taken under Crown management due to rates arrears and weed problems, but was returned so many years later with a debt and continuing weed problems.

275. Counsel seek separate findings and recommendations for the Wai 1439 claim as set out in that claim and in the evidence of Mr Kewene.³⁰¹

3.10 Public Works takings

276. The Ngāti Hikairo claims in relation to Public Works takings cover four key topics of land loss:

- i. The taking of land for roads – particularly lands taken under the '5% rule' where no compensation was paid;
- ii. Compulsory takings relating to various purposes such as Scenic Reserves or quarries;
- iii. The taking of land for the Ōpārau School; and,
- iv. The taking of land for the Pākanae School.

²⁹⁸ Hearn, #A69, p251

²⁹⁹ Hearn, #A69(a), p17

³⁰⁰ Berghan, #A60, p454

³⁰¹ Kewene, #N33, p12

277. This part of the closing submissions of Ngāti Hikairo also specifically address the Wai 2353 claim in relation to the Ōpārau School. The submissions here do not cover the taking of part of the Kāwhia P8 block for the Pākanāe School as those are canvassed in the Wai 2352 claim submissions. Accordingly, the Wai 2352 claim submissions are adopted herein.

278. Counsel have also dealt with the Mangauika Waterworks takings within the submissions on the environment.

279. Otherwise the above takings are dealt with in turn.

3.10.1 Takings for Roads

280. Ngāti Hikairo have claimed that the Crown took land from the iwi for the purpose of public roads but without consultation and without the payment of compensation³⁰²

281. It was ironic then that Ngāti Hikairo have assisted the Crown with the construction of these roads after their taking. For example, Hōne Kaora and his Ngāti Hikairo crew had constructed roads around Kāwhia and Raglan.³⁰³

282. In summary the Crown enacted legislation that allowed the Crown to compulsorily take up to 5% of certain Māori lands for roads. This was known as the “five percent” provision. The research by Mr David Alexander set out the key legislative provisions governing the “five percent” provision as follows:

- i. In the Native Land 1865 Act the “five percent” provision applied to certain land remaining in Māori ownership, but from 1882 the provision applied to all land issued a Native Land Court certificate of title or memorial of ownership.³⁰⁴ This provision or successor

³⁰² Alexander, #A63, p20; Section 76, Native Lands Act 1865

³⁰³ *Te Maru-ō-Hikairo*, #A98, p285

³⁰⁴ Alexander, #A63, p64

provisions remained on statute until 1927.³⁰⁵

- ii. There was no requirement in the Act for the Crown to consult Māori owners as to where on the land the road would go or the need for that land to be taken and no compensation was payable.

³⁰⁶

- iii. Any legislative protection afforded Māori from taking for places where pā, wāhi tapu and cultivations existed was inadequate as the Governor could still sign off on such takings and was treated as an administrative step rather than a substantive protection.³⁰⁷

- iv. Te Rohe Pōtae District was heavily affected by takings for roads under the “*no consultation and no compensation*” provisions of the Native land legislation during the nineteenth century and into the first two decades of the twentieth century.³⁰⁸

283. The Crown took lands from the following blocks in which Ngāti Hikairo has an interest for roads under the “five percent” provision and all without compensation.³⁰⁹

Section 93 Native Land Court Act 1886 and various Public Works Acts (Governor’s Warrants issued 1890s)

| Block | Area | Gazette Ref |
|-----------|--------|-------------|
| Mangauika | 4-1-06 | 1891/582 |

Section 70 Native Land Court Act 1894 and various Public Works Acts (Governor’s Warrants issued 1900 -1910)

| Block | Area | Gazette Ref |
|---------------------|--------|-------------|
| Pirongia West 1s2B3 | 4-1-05 | 1914/4177 |

S388, 389 Native Land Act 1909

| Block | Area | Gazette Ref |
|-------|------|-------------|
|-------|------|-------------|

³⁰⁵ The provision was included in the Native Land Act 1873 (Section 106)19, the Native Land Court Act 1886 (Sections 93-95), the Native Land Court Act 1894 (Sections 70-71), and the Native Land Act 1909 (Sections 388-391) and not repealed until Section 30 Native Land Amendment and Native Land Claims Adjustment Act 1927

³⁰⁶ Alexander, #A63, p64

³⁰⁷ Alexander, #A63, p18

³⁰⁸ Alexander, #A63, p20

³⁰⁹ All references to public works takings for roads or other purposes in this section are from David Alexander, Public Works Takings Database; #A63(a) unless otherwise stated

| | | |
|-----------------------------|--------|-----------|
| Kaipiha 10C | 0-2-25 | 1919/3037 |
| Pirongia West 1s2F1B | 0-2-10 | 1912/1777 |
| Pirongia West 3B2A | 2-0-33 | 1912/1777 |
| Pirongia West 3B2C3 & 3B2C4 | 7-0-05 | 1912/1777 |

284. On the basis of the above it is submitted that the Crown took approximately 18 acres of Ngāti Hikairo's lands for roads under the "five percent" provisions and therefore without payment of compensation.

285. There were also a series of compulsory takings for roading by the Crown under other Public Works Acts. These takings would usually attract a compensation payment, but in many cases Mr Alexander was unable to find any records whether or not compensation was paid. The following are various takings from lands in which Ngāti Hikairo has an interest.

Land taken for roading under Public Works Acts 1908 1928 1981

| Block | Area (acres) | Compensation paid | Gazette Ref |
|---|--------------|---|----------------|
| Kaipiha 10A | 2-2-34 | Not recorded | 1958/1309 |
| Kaipiha 10B | 1-0-34 | Nil ³¹⁰ | 1920/15-16 |
| Waihōhonu 6 | 0-1-13.7 | Not recorded | 1971/84 |
| Ōpārau 1 | 0.5080 | Not recorded | 1995/4794-4795 |
| Ōpārau 1 | 0.0217 | Not recorded | 1995/4794-4795 |
| Mangauika (s13 Block VII Pirongia SD) | 2-1-30 | Nil ³¹¹ | 1911/2705 |
| Kaipiha 10B | 1-0-34 | Nil ³¹² | 1920/15-16 |
| Kaipiha 10A | 2-2-34 | Not recorded | 1958/1309 |
| Sec17 Block VI Kāwhia Nth SD ³¹³ | 0.0567 | Not recorded | 1997/3724 |
| Sec1 Block VIII Pirongia SD ³¹⁴ | 0-3-39.4 | Nil | 1920/15-16 |
| Pirongia West 3B2C3 ³¹⁵ | 0-1-25.7 | Not recorded | 1923/564 |
| Pirongia West 1s2F1B2B | 0-0-17.4 | Not recorded | 1959/1625-1626 |
| Pirongia West 3B2C3A | 0-0-11.6 | Not recorded | 1959/1625-1626 |
| Pirongia West 1s2D1 | 0-3-11.6 | £30 ³¹⁶ (3/12/1964, 43 Mercer 169-170) | 1962/547-548 |
| Pirongia West 1s2D1 | 0-0-00.6 | £30 ³¹⁷ (3/12/1964, 43 Mercer 169-170) | 1962/547-548 |

³¹⁰ (22/9/1920, 62 Ōtorohanga MB 181)

³¹¹ (31/10/1912, 55 Ōtorohanga MB 84)

³¹² (22/9/1920, 62 Ōtorohanga MB 181)

³¹³ Road realignment - road stopping in same Notice. Associated taking at 1996/982, and associated taking and stopping at 1996/2271

³¹⁴ (22/9/1920, 62 Ōtorohanga MB 181) Road realignment - associated road stopping at 1921/590-591 and stopped road declared Crown Land at 1921/2383

³¹⁵ Incorrectly taken for Road, retaken for Shingle-quarry at 1923/1189

³¹⁶ (3/12/1964, 43 Mercer MB 169-170)

| Block | Area (acres) | Compensation paid | Gazette Ref |
|--------------------------------------|--------------|--|----------------|
| Pirongia West 1s2D2 | 0-1-03.9 | £5 ³¹⁸ (3/12/1964, 43 Mercer 169-170) | 1962/547-548 |
| Pirongia West 1s2G Lot 1 DP 8426 | 1-3-01.6 | £100 ³¹⁹ (3/12/1964, 43 Mercer 169-170) | 1962/547-548 |
| Pirongia West 1s2B3A2 ³²⁰ | 0-2-39.9 | Not recorded | 1963/1194 |
| Pirongia West 1s2B3B ³²¹ | 0-2-39.9 | Not recorded | 1963/1194 |
| Pirongia West 1B | 2-0-16.1 | Not recorded | 1964/1206 |
| Pirongia West 1C2s2 | 1-1-31.9 | Not recorded | 1964/1206 |
| Pirongia West 1s2D2 | 0-0-01.1 | Not recorded | 1975/1860 |
| Pirongia West 1s2D2A | 0-2-36.9 | Not recorded | 1975/1860-1861 |

3.10.2 Various other Public Works Takings – where compensation was payable

286. In the following we set out the data of various other types of public works takings in which Ngāti Hikairo has an interest. For example, there were takings for Quarries and Shingle Pits under various Public Works Acts:

| Block | Area | Gazette or Plan Ref | Compensation paid |
|--|--------|---------------------|-------------------|
| Pirongia West 3B2C4 Quarry | 1-3-36 | 1925/1951 | None recorded |
| Bed of Mangauika Stream | 0-1-26 | 1955/1253 | Not recorded |
| Sec 1 Block VIII Pirongia SD Lots 3 & 4 DP 16085 | 2-2-29 | 1955/1253 | £100 |
| Bed of Ōpārau River Shingle-quarry | 1-3-07 | 07/03/1923 | Not recorded |

287. The Crown took lands from the following blocks in which Ngāti Hikairo has an interest for other purposes as outlined in the following table:

³¹⁷ (3/12/1964, 43 Mercer MB 169-170)

³¹⁸ (3/12/1964, 43 Mercer MB 169-170)

³¹⁹ (3/12/1964, 43 Mercer MB 169-170)

³²⁰ Road realignment - associated taking at 1962/620-621, 1964/2390 & 1976/253. Associated road declared to be Government Road and stopped at 1964/181 & 1965/5, and associated closing/stopping at 1976/253 & 2006/44-45

³²¹ Road realignment - associated taking at 1962/620-621, 1964/2390 & 1976/253. Associated road declared to be Government Road and stopped at 1964/181 & 1965/5, and associated closing/stopping at 1976/253 & 2006/44-45

Land taken for other purposes under Public Works Acts

| Block and Purpose | Area | Compensation paid | Gazette Ref |
|--|-----------|--------------------------|----------------|
| Kaipiha 10B Easement for water pipeline only | 1-0-13.7 | Not recorded | 1962/1997-1998 |
| Kaipiha 7B Easement for water pipeline only | 0-3-31.8 | Not recorded | 1962/1997-1998 |
| Mangaora 1 Scenic Reserve | 1-2-17 | £5 ³²² | 1924/902 |
| Mangaora 3 Scenic Reserve | 18-0-02 | £50 ³²³ | 1924/902 |
| Mangaora 4 Scenic Reserve | 6-1-03 | £15 ³²⁴ | 1924/902 |
| Mangauika 1B1 & Whakairoiro 5C2C2 Waterworks | 1-3-18.8 | Not recorded | 1962/1997-1998 |
| Mangauika 1B1 & Whakairoiro 5C2C4 Waterworks | 0-1-01.9 | Not recorded | 1962/1997-1998 |
| Mangauika 1B2s2B Waterworks | 0-1-39.2 | Not recorded | 1962/1997-1998 |
| Mangauika B2s2 Waterworks | 428-2-00 | Not recorded | 1962/1997-1998 |
| Sec 73 Block II Kārewa Native Township Health (District Nurse's Residence) | 0-0-25 | Not recorded | 1953/664 |
| Kaipiha 10B Waterworks | 1-0-13.7 | Not recorded | 1962/1997-1998 |
| Kaipiha 7B Waterworks | 0-3-31.8 | Not recorded | 1962/1997-1998 |
| Pirongia West 1s2F1B Landing Reserve | 0-1-02 | Not recorded | 1908/2660-2661 |
| Pirongia West 1s2H Landing Reserve | 3-0-29 | Not recorded | 1908/2660-2661 |
| Pirongia West 3B2E2D Scenic | 10-3-38 | £27-10-0d ³²⁵ | 1913/2628-2629 |
| Pirongia West 1s2F1B Public School | 2-3-06.84 | £110 ³²⁶ | 1918/599-600 |
| Pirongia West 3B2C4 Quarry | 1-3-36 | None recorded | 1925/1951 |
| Pirongia West 1s2F1B2B Public School | 0-1-23.1 | £65 ³²⁷ | 1942/2015 |

³²² 15/2/1928, 24 Mercer MB 222

³²³ 15/2/1928, 24 Mercer MB 222

³²⁴ 15/2/1928, 24 Mercer MB 222

³²⁵ (14/1/1914 & 17/2/1915, 18 Mercer MB 165-166 & 19 Mercer MB 193)

³²⁶ (14/4/1919, 21 Mercer MB 318-321)

³²⁷ (23/2/1944, 29 Mercer MB 182-185 & 199A) Subsequently set apart for Education at 2006/3466

| Block and Purpose | Area | Compensation paid | Gazette Ref |
|--|----------|---------------------------|----------------|
| Pirongia West 1s2F1B2B Public School | 0-1-02 | £354-10-0d ³²⁸ | 1960/1640 |
| Sec 1 Block VIII Pirongia SD Lot 5 DP 16085 ³²⁹ Waterworks | 0-2-11 | Not recorded | 1962/1997-1998 |
| Sec 1 Block VIII Pirongia SD Lot 6 DP 16085 ³³⁰ Waterworks | 0-0-02.8 | Not recorded | 1962/1997-1998 |
| Sec 3 Block VIII Pirongia SD ³³¹ Waterworks | 0-1-04.4 | Not recorded | 1962/1997-1998 |

288. A particular claim with the Wai 2353 claim is that the Crown took too much harbour frontage land from the Pirongia West 3B2E2 block for a Scenic Reserve. It is submitted that such harbour frontage is important to support whānau fishing and sea access needs.

289. Upon becoming aware that the Crown intended to take part of the Pirongia West 3B2E2, the lessee complained that it was unfair to take such land from a large block when it only had “40 chains” of harbour frontage. The block was 3,064:0:00 acres in size. Nevertheless, in 1913 the Public Works Department issued a “Notice of Intention to Take” land from the Pirongia West block for a scenic reserve.³³² Later on 6 September 1913 the Crown took 10:3:38 acres of harbour frontage land from the Pirongia West 3B2E2 Block. The compensation was assessed at £27-10-0d, of which £22 would be paid to the owners and the remainder to the lessee.³³³

3.10.3 Ōpārau School Public Works Takings

290. Ngāti Hikairo, including the Wai 2353 claimants, consider that the Crown unfairly took land from Ngāti Hikairo whānau for the Ōpārau School. The evidence is that the Ōpārau School was alienated from a section of Te Whānau Pani hapū.³³⁴ The area around the Ōpārau School constitutes

³²⁸ (24/1/1961, 39 Mercer MB 323-324) Subsequently set apart for Education at 2006/3466

³²⁹ Easement for water pipeline only

³³⁰ Easement for water pipeline only

³³¹ Easement for water pipeline only

³³² Alexander #A63, pp 513, 515; #A63(a), reference 555; Berghan, #A60, pp 757, 761

³³³ Alexander #A63, p515; #A63(a), reference 555

³³⁴ Te Maru-ō-Hikairo, #A98, p307

the former kāinga of Ngāhuinga.³³⁵

291. In the following we describe three sets of land takings for the school.

1918 Taking

292. The Auckland Education Board published a “Notice of Intention to Take” in relation to 3:1:07 acres of land at Ōpārau for a public school in October 1916. Paahi Moke, one of the owners, made an objection on the grounds that the harbour frontage of the block would be reduced to the “hardship” of the owners and that the school buildings were already on that part of the block under lease, but rent wasn’t being paid. The Education Board argued that the paying of rent was a matter for the School Committee and was not relevant to the taking and that no other relevant issues were raised.³³⁶

293. A Māori Land Court judge inquired into the objection and found that while the loss of road frontage and convenient road access were issues the main objection was “*a general unwillingness to part with the land*” and the judge considered this feeling was based upon a view that the public works compensation would be less than the market.³³⁷ It is submitted that the Court may well have misunderstood the depth of feeling of the owners about the land and that the compensation was not the critical issue.

294. It must be acknowledged that the Auckland Education Board decided to not to take the land beneath the school buildings so as to conserve the owners’ interests in the land and re-advertised the taking. Still, the Education Board took 2:3:06.84 acres from the Pirongia West 1s2F1B Block for the school in March 1918 and £110 in compensation was apparently paid.³³⁸

1942 Further Taking

295. In 1942 the question of land for the school arose again. In February 1942

³³⁵ *Te Maru-ō-Hikairo*, #A98, p308

³³⁶ Alexander #A63, p202

³³⁷ Alexander #A63, pp 198-200

³³⁸ Alexander #A63, p204; #A63(a), reference 902

a “Notice of Intention to Take” was published for a further 0:1:23.1 acres. The Education Board advised the Public Works Department that two objections were received and set a time for objections to be heard in Auckland. The objectors did not make the journey to Auckland and the Board decided the matter in their absence.³³⁹

296. The 0:1:23.1 acres was taken from the Pirongia West 1s2F1B2B Block in August 1942 and later £65 compensation was assessed. This was despite the failure of the Public Works Department to inquire into what the two objections were or to consider the unfairness of expecting the objectors to travel from Ōpārau to Auckland.³⁴⁰

297. In February 1943 Paahi Moke and others wrote to a Māori MP and complained “[...] *this land used to belong to our revered forebears*”. He referred to the harbour frontage issue and stated that the “[...] *place is a home site of our forebears*”, was the site of earlier houses and a proposed new house (the carpenter was just about to begin). He concluded “*We would very greatly love to retain this home site of our forebears*”.³⁴¹

298. The Auckland Education Board consulted with the Ōpārau School Committee and concluded the taking could proceed and commented that “*If this site is the home of their forebears, they are apparently going back a very long way, as we can find no old resident who remembers this family living on the site*”, and that the new house was to be built in a different site.³⁴²

1960 Further Taking

299. In 1960 the Crown sought to take a further 0:1:02 acres of the Pirongia West 1s2F1B2B Block along the road frontage beside the Ōkupata Stream bridge.³⁴³

300. The section included a house that was occupied by an owner, Heti Moke.

³³⁹ Alexander #A63, pp 204-5; #A63(a), reference 1937

³⁴⁰ Alexander #A63, p 205; #A63(a), reference 1937

³⁴¹ Alexander #A63, pp 205-6; #A63(a), reference 1937

³⁴² Alexander #A63, pp 206-7; #A63(a), reference 1937

³⁴³ Alexander #A63, pp 207-8; #A63(a), reference 2672

The parties came to an agreement and the land was purchased for £350. The Crown's attitude appeared to ignore the importance of traditional lands to the owners, but rather focused on the financial benefit the owners received.³⁴⁴

301. In relation to the takings, Mr Moke gave evidence that, "*Our whānau kōrero is that our tupuna Mamae Kaora reluctantly agreed to give over some land towards the Ōpārau School*".³⁴⁵ Mr Moke questioned why the Crown did not look to another alternative to the compulsory taking such as a lease of the land.³⁴⁶ In relation to the payment of compensation, Mr Moke stated:

"my grandfather, Paahi, was adamant that the compensation was never actually paid over to the whānau".³⁴⁷

302. Responding to written answers of clarification from counsel, Mr Alexander was unable to confirm whether or not the compensation monies were actually paid, but he had no reason to doubt that the money was not paid. In the case of the taking in 1960, Mr Alexander noted that a law firm had been engaged by the owners and was negotiating as to the compensation payment.³⁴⁸

303. Counsel note that one of the Ngāti Hikairo witnesses gave evidence that:

"I know the school was built from the wood that came from our land at Kaiewe".³⁴⁹

304. Ironically, the Ngāti Hikairo kuia Mere Gilmore who is of the hapū who had provided the land and the wood for the Ōpārau School, gave evidence of her attendance at the Ōpārau School that:

"The teachers never allowed us to speak Māori at school".³⁵⁰

3.10.4 Conclusions

305. While the various road and other takings set out in these submissions are

³⁴⁴ Alexander #A63, pp 208-9; #A63(a), reference 2672

³⁴⁵ Moke, #N37, p7

³⁴⁶ Moke, #N37, p8

³⁴⁷ Moke, #N37, p8

³⁴⁸ Alexander, #A63(d), pp 28-29

³⁴⁹ Gilmore, #N16(a), p6

³⁵⁰ Gilmore, #N16(a), p6

not individually very large, it is submitted that cumulatively they have had an obvious impact upon the land holdings of Ngāti Hikairo. In a number of cases there was no evidence of compensation being paid for the road takings or the evidence shows that compensation was definitely not paid.

306. Accordingly, it is submitted that Ngāti Hikairo has assisted, without charge to the Crown, with the development of the infrastructure within their rohe to the obvious benefit of the country.

307. The Public Works takings from the Ōpārau School were marked by continual opposition to the takings by the Moke whānau, but the Crown kept returning to take further small sections. The common theme of the protests against the takings was that the whānau wished to retain the land of their forebears. Nevertheless, the takings proceeded. Mr Moke noted that the Crown never looked at simply leasing the land so as to protect their ownership. The lands have now been “land-banked” for potential Treaty settlement.³⁵¹

3.11 Uneconomic interests and the Conversion Scheme

308. In this section counsel discuss the compulsory taking of Ngāti Hikairo individual’s shares in Māori Freehold land that were deemed “uneconomic” and the compulsory conversion of certain Māori Freehold blocks into general title.

3.11.1 “Europeanisation”

309. The Māori Affairs Amendment Act 1967 provided for the “Europeanisation” of certain Māori Freehold lands. Under that Act the registrar of the Māori Land Court could declare that the status of certain Māori Freehold land was general land. This did not require confirmation by the judge and could occur where a block had four or less owners. This was without consultation with or permission from, the Māori owners.³⁵² The evidence was that the Māori Affairs Amendment Act 1967 was designed to make it

³⁵¹ Moke, #N37, p8

³⁵² Bassett and Kay, #A75, p415

easier for Māori Freehold land that had been “Europeanised” to be alienated.³⁵³ It is submitted that this effectively circumvented any protections that existed against the alienation of Māori Freehold land under the Māori Affairs Act 1953.

310. The Māori Affairs Amendment Act 1967 made no provision for consultation with Māori about whether they wished their land to be ‘Europeanised’. According to Bassett and Kay, around 1,725 out of 51,277 acres awarded to Ngāti Hikairo outside the confiscation district were “Europeanised” between 1968 and 1973 (figures are in acres).³⁵⁴

| Block | Area acres | Europeanised |
|---------------|-------------------|---------------------|
| Kāwhia | 5,373 | 649 |
| Pirongia West | 36,289 | 594 |
| Motukōtuku | 198 | 65 |
| Waihōhonu | 1,093 | 0 ³⁵⁵ |
| Kaipiha | 1,977 | 317 |
| Mangauika | 5,473 | 100 |
| Totals | 51,277 | 1,725 |

311. Kīngi Pōrima gave evidence in this inquiry that he only discovered that his own land was in general title when he prepared evidence for the inquiry. He attached a copy of the title to the Kāwhia T2s3B block which remains in general title under the name of his father Tuawhio Pōrima.³⁵⁶

312. In the Pirongia West and Kāwhia block case studies analysed by Mr Thorne, most of the “Europeanised” lands of Ngāti Hikairo had been alienated.³⁵⁷

³⁵³ Bassett and Kay, #A75, p415

³⁵⁴ Based upon Douglas *et al*, #A21; Berghan #A60

³⁵⁵ There may well have been “Europeanisation” of lots within the Waihohonu Block, Berghan, #A60, pp 1169-70 lists as “European” Waihohonu 6, 12, & Roads blocks (a total of 130 acres)

³⁵⁶ Pōrima, #N29, pp 7-7; #N29(a)

³⁵⁷ Thorne, #N53, p9

3.11.2 Conversion

313. Part XIII of the Māori Affairs Act 1953 provided for the purchase or compulsory conversion of uneconomic interests (£25 or less in value).³⁵⁸ The Māori Trustee appears to have conducted “live buying” in te Rohe Pōtae which involved the purchasing shares from willing sellers and selling them to other owners (or perhaps to other Māori generally).³⁵⁹ The conversion of “uneconomic shares” was continued in the Māori Affairs Amendment Act 1967. The conversion of “uneconomic shares” in Māori land was a method adopted by the Crown to address the fractionation of ownership through succession. Two Commissions of Inquiry reported on problems associated with succession to Māori land in 1961 and 1965 (the Hunn Report of 1961 and the Pritchard Waetford Report of 1965). The recommendation of the Pritchard Waetford Report was that the problem of fractionation arising out of the succession to titles in Māori land could be ameliorated by the Māori Trustee being empowered to compulsorily acquire all shares in Māori land worth less than £100. This recommendation was enacted in section 128 of the Māori Affairs Amendment Act 1967.³⁶⁰
314. Under section 128 of the Māori Affairs Amendment Act 1967 the Māori Trustee was empowered to acquire compulsorily any Māori land interests arising out of a succession application where those interests were worth \$50 or less.³⁶¹ It is acknowledged that after much complaint by Māori, that section was later abolished by s23 of the Māori Affairs Amendment Act 1974. Nevertheless, during the period while the provision was in force many Māori lost their interests in their lands in exchange for monetary payment. In the Ngāi Tahu Inquiry the Waitangi Tribunal criticised the conversion provision because it “*allowed small interests in Māori land to be acquired by the Māori Trustee on succession [and] had the effect of disenfranchising many Māori landowners*”.³⁶²

³⁵⁸ Bassett and Kay, #A75, p395

³⁵⁹ Bassett and Kay, #A75, p396

³⁶⁰ Bassett and Kay, #A75, pp 402-3

³⁶¹ Bassett & Kay, #A75, pp 403, 406-7

³⁶² Waitangi Tribunal, *Ngāi Tahu Ancillary Claims Report*, 1995, para 6.2.3, p326

315. The evidence of Bassett and Kay showed a large number of owners were dispossessed of their tūrangawaewae or ancestral rights to their lands because their shares were deemed by the Crown to be “*uneconomic*”. Indeed, the Māori Trustee, from 1968, purchased the following “uneconomic interests” from Ngāti Hikairo lands.³⁶³

| Block | Purchased by agreement | Purchased by agreement | Compulsory Purchase | Compulsory Purchase |
|----------------|------------------------------|------------------------------|------------------------|------------------------|
| | Shares | Amount | Shares | Amount |
| Kāwhia M2P11 | 0 | 0 | 0.1593 | \$102.98 |
| Kāwhia M2P12 | 7.7591 | \$621.69 | 0 | 0 |
| Kāwhia R2C1B | 56.2734 | \$528.43 | 108.6862 | \$386.54 |
| Kāwhia T2s2B2B | 38.1197 | \$92.68 | 0 | 0 |
| Kāwhia T2s4B2 | 1.1000 | \$1,944.49 | .7995 | \$138.40 |
| Kāwhia W2B | 1.6666 | \$111.07 | 0 | 0 |
| Mangauika 1 | 0.0250 | \$0.36 | 0.0375 | \$0.54 |

316. In particular, in the Kāwhia E2B1 block the share of Te Puhi a Hikairo Rauparaha was declared uneconomic and vested in the Māori Trustee.³⁶⁴

3.11.3 Conclusions

317. The Crown has repealed the legislative provisions that allowed for the compulsory conversion of “uneconomic” interests and the compulsory change of status of certain Māori Freehold land. Nevertheless, while active those provisions have clearly affected Ngāti Hikairo individuals. The

³⁶³ Bassett & Kay, #A75, p411

³⁶⁴ Bassett & Kay, #A75, p399; this matter is covered by the Wai 2291 claim made by her descendants

evidence is that most blocks where the status was compulsorily changed to general title have been alienated. In one case, the whānau discovered that their lands were under the name of their late father and in general title only during the preparation of their evidence for this inquiry.

4. Failure to protect ngā Taonga Tuku iho o Ngāti Hikairo

4.1 Introduction

318. This section of the submissions addresses the claims and evidence in relation to the Crown's failure to protect ngā taonga tuku iho o Ngāti Hikairo.

319. The claimants allege that the Crown has failed to protect te Reo Māori and Ngāti Hikairo customs and culture through the Crown's various education and other policies. The claimants also allege that the Crown has pursued assimilationist policies and education resulting in the near extinction of te Reo Māori and tikanga of Ngāti Hikairo. Further, the claimants state that the Crown failed to ensure Ngāti Hikairo retained full exclusive and undisturbed possession of their taonga and failed to provide for the practice of Ngāti Hikairo religion and tikanga.³⁶⁵

320. Issues relating to the loss of te Reo Māori me ona tikanga feature prominently in the evidence filed in support of the Ngāti Hikairo claims. These aspects of the Ngāti Hikairo claims were specifically addressed in the evidence of Gareth Seymour,³⁶⁶ Roimata Pikia,³⁶⁷ Jack Cunningham,³⁶⁸ Hano Ormsby,³⁶⁹ Amiria Te Ao Marama Ratu-Le Bas,³⁷⁰ Kīngi Pōrima,³⁷¹ Hinga Whiu,³⁷² Manaoterangi Forbes,³⁷³ and Kore Ratu.³⁷⁴

321. It is submitted that the Crown's failings in this regard are a significant and ongoing issue for Ngāti Hikairo as the iwi strives to recover its reo and aspects of tikanga that have been impacted on by Crown actions and omissions.

³⁶⁵ Wai 1113 Amended Statement of Claim at paragraphs 119-124

³⁶⁶ Seymour, #N46

³⁶⁷ Pikia, #N10

³⁶⁸ Cunningham, #N38

³⁶⁹ Ormsby, #N30

³⁷⁰ Ratu-Le Bas, #N12

³⁷¹ Pōrima, #N29

³⁷² Whiu, #N17

³⁷³ Forbes, #N31

³⁷⁴ Ratu, #N11

4.2 Tikanga

322. The Tribunal will recall the evidence that Ngāti Hikairo is a tohunga people, deeply grounded in tikanga and spirituality. The iwi was well known for their spiritual knowledge with renowned tohunga forebears such as Rakataura and Te Tapihana.
323. Ngāti Hikairo *“lived by the teachings of our tohunga and their spiritual leadership was vital to our very being.”*³⁷⁵
324. Similar to the claim in respect to te reo Māori, many Ngāti Hikairo witnesses gave evidence as to the Crown’s efforts to stamp out tikanga and tohunga practices. In particular, Manaoterangi Forbes and Kore Ratu gave evidence as to the struggle of Ngāti Hikairo to retain and protect their tohunga knowledge and tikanga as the Crown worked hard to eliminate them.
325. Manaoterangi Forbes’ brief of evidence was completely focused on the destruction of Ngāti Hikairo tohunga knowledge and practices; the systematic destruction of tohunga education processes; and the destruction of the traditional intellectual leadership of Ngāti Hikairo by the Crown. Mr Forbes gave evidence of the aspects of tohunga knowledge and some of the very significant tohunga of Ngāti Hikairo.
326. With respect to the Tohunga Suppression Act Mr Forbes stated that after the Act came into force many tohunga declined to pass on their spiritual and intellectual ideologies and that through the Act and other pieces of legislation, Ngāti Hikairo has suffered the severest of intellectual and spiritual deprivation to this very day.³⁷⁶ Mr Forbes gave detailed evidence of particular tohunga, taniwha, wāhi tapu and practices of Ngāti Hikairo.
327. Te Kore Ratu gave evidence of the loss of Ngāti Hikairo tohunga knowledge and the impact of that loss on Ngāti Hikairo. Ms Ratu’s key point was that the Crown actively worked to colonise and assimilate Ngāti

³⁷⁵ Ratu #N11, paragraph 8

³⁷⁶ Forbes #N31 paragraphs 4, 21, 30, 31

Hikairo so that today only a few “lucky ones” hold the tribal knowledge.³⁷⁷ She noted that throughout the 1800s and into the early 1900s Ngāti Hikairo spirituality and tohunga ways were openly practiced on the Marae. However, the Tohunga Suppression Act was well known to Ngāti Hikairo and:

“caused many of our people to stop practicing our spirituality and to stop teaching it to the next generations....I do know that many feared that being a tohunga would cause them trouble in the Pakeha world.”³⁷⁸

328. It is submitted that the direct impact of that legislation for Ngāti Hikairo was that with each new generation following the 1900s there were fewer and fewer tohunga amongst Ngāti Hikairo.³⁷⁹ It was irrelevant whether the legislation was actually applied or not. Counsel submits that this failure to protect Ngāti Hikairo custom and culture was a contravention of the principles of the Treaty by the Crown.

329. Kīngi Pōrima stated that kaumātua of his generation have a better sense of whanaungatanga and collectiveness compared to the younger generation and that:

“the Crown has played a role in this change with its education systems and constant pressure to get Māori into the cities. Also...the Crown has helped to create a constant pressure upon our people to abandon our customary ways.”³⁸⁰

4.3 Te Reo Māori

330. With respect to te Reo, it is submitted that the claims before this Tribunal relate to the specific prejudice suffered by Ngāti Hikairo rather than generic matters that are covered in the Tribunal’s *Te Reo Māori Report*.³⁸¹ Further, it is submitted that the evidence of Ngāti Hikairo will assist the Tribunal in its determination of the prejudice that has been suffered by the claimants and the Tribunal’s recommendations for relief.

331. A key matter that the Ngāti Hikairo witnesses have identified for the

³⁷⁷ Ratu #N11, paragraph 6

³⁷⁸ Ratu #N11, paragraph 7

³⁷⁹ Ratu #N11, paragraph 7

³⁸⁰ Pōrima #N29 paragraph 13

³⁸¹ *Te Reo Māori Report*, 1986, Government Printer

Tribunal is that te Reo Māori is the carrier of custom or tikanga and the two matters are highly interdependent and intertwined. Gareth Seymour gave evidence that:

“With the eradication of the language, the traditions of Ngāti Hikairo were no longer passed on – Kīngitanga, weaving, traditional music, food gathering – so many of the traditions. The results of the destruction of Māori culture have been disastrous...

...The destruction of our language and culture has caused immeasurable damage to the mental, physical, spiritual and cultural well-being of Ngāti Hikairo.”³⁸²

332. For these reasons, it is submitted that where the Crown has failed to protect te Reo Māori through its education system it has therefore failed to protect Ngāti Hikairo in the retention of their customs and tikanga.

333. The evidence provided to this Tribunal was that the elders of Ngāti Hikairo experienced the Crown education policies through their schooling. Witnesses of Ngāti Hikairo gave evidence that they were physically punished for speaking te Reo Māori and that the language was banned at school. Gareth Seymour noted that *“generations had been subject to violence as children for speaking Māori at Kāwhia School, a school set up and run by the Crown.”³⁸³*

334. For example:

- a. Kaumātua Kīngi Pōrima recalled his first experience of restrictions on te reo when he started at Kāwhia School: *“I remember speaking to another boy at school and he went off and told the teacher that I was speaking in Māori so I got wacked. I didn’t speak as much after that as I was scared.”³⁸⁴*
- b. Hinga Whiu gave evidence that her mother, Mere Tai Hauauru Gilmore was strapped for speaking Māori at school and forced to sit in a corner under a picture of King George VI. She noted that

³⁸² Seymour #N46a paragraphs 57, 58 and 68

³⁸³ Seymour #N46a paragraph 51

³⁸⁴ Pōrima #N29 paragraph 16

this “is what she remembers to this day so that experience must have had a big impact on her and her use of her reo rangatira”.³⁸⁵

- c. In speaking of the “suppression of my language”, kaumātua Jack Cunningham gave evidence that:

*“The Māori language was already being done away with before I was born, and the English language was given more importance....First, we weren’t allowed to speak Māori. Second, we were beaten if we spoke Māori at school. Third, we were taught that it was bad, it was a nuisance and a waste of time to speak Māori. Fourth, there was no benefit for us in that language.”*³⁸⁶

335. Surprisingly there was no written evidence located by the Tribunal witness Dr Christoffel³⁸⁷ in his education report, of Māori children in Te Rohe Pōtae Inquiry being strapped or physically punished by teachers for speaking Māori. While claimant evidence amongst Ngāti Hikairo and throughout the Inquiry District is replete with stories of physical punishment of kuia and kaumātua for speaking Māori at school when, the Crown record appears to be silent on this matter. In counsels’ submission this suggests that although teachers were required to keep records of physical punishment of children they simply did not do so. Moreover, in cross-examination Dr Christoffel acknowledged that there has been significant evidence in numerous Tribunal Inquiries of corporal punishment occurring and that if it was commonly happening across many areas in the country then the Crown through the Education Department should have known that this was occurring.³⁸⁸

336. Dr Christoffel acknowledged that the negative impacts of corporal punishment would have obviously affected the willingness of children to learn.³⁸⁹ He further stated that such punishments appear to have been misguidedly inflicted by teachers in aid of the official policy of immersion teaching. Despite the lack of evidence of physical punishment located by Dr Christoffel in official sources such as Native School log books (where

³⁸⁵ Whiu #N17 paragraph 10

³⁸⁶ Cunningham #N38a paragraphs 30 and 31

³⁸⁷ Wai 898 #A27 P Christoffel, *The Provision of Education Services in Te Rohe Pōtae, 1840 – 2010*

³⁸⁸ Hearing Week Fourteen transcript, cross-examination of Dr Christoffel, pp 1105-1106

³⁸⁹ Hearing Week Fourteen transcript, cross examination of Dr Christoffel, p 1070

such instances ought to have been recorded), he stated that evidence from other sources was so compelling that the issue of punishment for speaking Māori seemed beyond question, and was likely to have occurred within the Inquiry District.³⁹⁰ That is certainly the position of the Ngāti Hikairo claimants.

337. A number of the Ngāti Hikairo witnesses noted how the generations through the 1920s to 1950s to the 1980s began to focus on the English language because they perceived it was the only way to survive and because parents wanted to protect their children from being hurt by Crown agents and teachers they stopped passing on the language.³⁹¹ Hano Ormsby stated in evidence that:

*“The Crown’s education system in the 1950s and 1960s took away any ability to learn te Reo Māori. I think many of our people were caught up in this too and thought that they should not teach their children te Reo as it would not help them in the modern world...At primary school there was 100% Māori on the roll, but there was nothing Māori in the system at all.”*³⁹²

338. Counsel submit that the Crown bears a significant responsibility for allowing this circumstance to occur. Mr Ormsby is just one of many Ngāti Hikairo witnesses who spoke of this issue. Before other Waitangi Tribunal inquiries Crown counsel have tried to suggest that Māori bear a primary responsibility in terms of their own agency in choosing to leave behind their language in favour of English. It is submitted that the point is that the Crown was governing the education system that promoted assimilationist policies and punished Māori for using their own language in the school system. Indeed, in *Te Reo Māori Report* the Tribunal highlighted how a school inspector taught the children that “*English is the bread-and-butter language, and if you want to earn your bread and butter you must speak English*”.³⁹³

339. It is submitted also that the Crown is responsible for the protection of te

³⁹⁰ Wai 898 #A27 P Christoffel, *The Provision of Education Services in Te Rohe Potae, 1840 – 2010*, pp 119, 145

³⁹¹ Seymour #N46a paragraph 55 and 56

³⁹² Ormsby #N30 paragraph 5

³⁹³ *Te Reo Māori Report*, 1986, Waitangi Tribunal, Government Printer, section 3.2.6

Reo Māori within the wider society, but did nothing until relatively recently to seek to ensure such protection. Moreover, it is largely through the efforts of the iwi themselves that the reo has been able to survive and begin to rebuild. The issue is well articulated by Gareth Seymour when he spoke of the wananga reo held at Waipapa Marae and recordings of kaumātua and kuia undertaken by the Resource Management committee of the Rūnanganui ō Hikairo, all in an effort to capture the history, reo and mita of Ngāti Hikairo.³⁹⁴

340. The evidence showed how the language has been rapidly lost. It is submitted that much of this loss is due to the loss of land and resources that forced many Ngāti Hikaro whānau to leave Kāwhia in search of work. Furthermore, Kāwhia School did not allow Māori to be spoken or taught and it is only in very recent years that this situation has changed. Roimata Pikia gave evidence that her father left Kāwhia in the 1950s in search of work settling in Invercargill where he raised his whānau in a very Pākehā environment:

*“Most of Dad’s generation especially those who grew up in Kawhia spoke Māori as their first language. This suggests that Māori was very strong in homes in Kawhia in the thirties and forties. There are however very few of the next generation, whether raised in or out of Kawhia, who learnt to speak Māori as children. It amazes me, and I’m sure it would also surprise our tūpuna, that our reo could be lost so fast. One generation is all it took”*³⁹⁵

341. In *Te Reo Māori Report* the Tribunal found that “*To protect the language it must be used*”.³⁹⁶ This was also the evidence of Hinga Whui who taught her children at home because the reo needed to be spoken 24/7, in the home and in everyday life. It is submitted that it remains the Crown’s duty to continue seeking to protect te Reo Māori.

342. It is submitted that the various briefs of evidence on te Reo Māori show that the language continues to be lost and remains endangered. In particular, witnesses described how the Ngāti Hikairo dialect is nearly lost.³⁹⁷ This suggests that the Crown continues to have Treaty duties to

³⁹⁴ Seymour #N46a paragraphs 59-62

³⁹⁵ Pikia #N10 paragraph 22

³⁹⁶ *Te Reo Māori Report*, 1986, Waitangi Tribunal, Government Printer, section 5.02

³⁹⁷ Seymour #N46a paragraphs 43-47

protect te Reo Māori for Ngāti Hikairo.

343. The evidence of Roimata Pikia, Hinga Whiu and Amiria Ratu-Le Bas canvassed how Ngāti Hikairo have struggled to keep a kōhanga open (one operated for a while but is now closed) and kura for teaching te Reo Māori within Kāwhia. Roimata Pikia discussed the difficulties of running a kura under present Crown policy. On returning to Kāwhia in the year 2000 she was shocked to find that she was the only Māori teacher and the school was only just beginning to implement bilingual education.³⁹⁸ Her evidence was that very few of the children who attend Kāwhia School speak Māori at home as their parents and often grandparents are the offspring of those who were discouraged, often physically from speaking Māori. Thus, the Crown's eurocentric systems of the past are having ongoing impacts on Ngāti Hikairo today. A further challenge for the kura and its community is a dramatically falling school roll due to whānau having to leave Kāwhia for employment. Accordingly, the survival of the school at Kāwhia is tenuous.³⁹⁹

4.4 Conclusion

344. It is submitted that all of this evidence demonstrates that the Crown has failed to protect te Reo Māori and tikanga of Ngāti Hikairo and to provide adequate education systems and entitlements for Māori that properly meet their needs. The impact of these failings is best described in the words of Mr Forbes:

*"Ngāti Hikairo have a long history and ancestry as tohunga, but we believe that the Crown has actively undermined this. We think the Crown has been instrumental in the loss of our knowledge and tikanga. Where our customs and way of life have been eroded...the Crown has not stepped in to assist us or help us to recover. How do we manage this into the future? We hope for Tribunal support and guidance with recommendations to the Crown."*⁴⁰⁰

³⁹⁸ Pikia #N10 paragraph 28

³⁹⁹ Pikia #N11 paragraphs 29 and 37

⁴⁰⁰ Forbes #N31 paragraph 126

4.5 Socio-economic Disadvantage

4.5.1 Introduction

345. This section of the submissions addresses the claims and evidence with respect to the Crown's failure to protect Ngāti Hikairo from socio-economic disadvantage.⁴⁰¹

346. The Ngāti Hikairo claimants allege that the Crown adopted policies and enacted legislation affecting Ngāti Hikairo people and lands which had massive impacts upon their economic and social circumstances. Further, the claimants allege that the Crown failed to provide proper education, health services, housing, employment and other entitlements to Ngāti Hikairo.

347. It is submitted that the failure to provide such entitlements as well as widespread land loss were a breach of the principles of the Treaty. Further, these failures have caused many Ngāti Hikairo people to have to move away from their ancestral lands in order to survive.

348. The evidence of the late Pohepohe Mac Bell,⁴⁰² Frank Thorne,⁴⁰³ Tom Moke,⁴⁰⁴ Hinga Whiu,⁴⁰⁵ Dr John Burton,⁴⁰⁶ Venus Daniels,⁴⁰⁷ and "*Te Maru-ō-Hikairo*" report⁴⁰⁸ addressed economic, social, cultural and health matters for Ngāti Hikairo. However, the issue of the impact of land loss on the social and economic position of the iwi was widely canvassed in many of the briefs of evidence filed in support of the Ngāti Hikairo claims.

4.5.2 The worst deprivation began with the wars

349. The Tribunal will recall the evidence from Tom Moke about the significant commercial interaction between Ngāti Hikairo and Pākehā traders at

⁴⁰¹ Wai 1113 Amended Statement of Claim at paragraphs 116-118

⁴⁰² Bell, #K11

⁴⁰³ Thorne #I11

⁴⁰⁴ Moke, #N37

⁴⁰⁵ Whiu, #N17

⁴⁰⁶ Burton, #N19

⁴⁰⁷ Daniels, #N13

⁴⁰⁸ *Te Maru-ō-Hikairo*, #A98

Kāwhia and Ngāti Hikairo's active role in trading enterprises from the mid-1820s.⁴⁰⁹ This time was described by Mr Moke as a "golden era" of commerce for the iwi as it engaged in flax trading, food production, flour mills and international shipping. Pākehā traders were incorporated into the iwi by marriage and Ngāti Hikairo was still the dominant force in Kāwhia and would remain so throughout this period. Mr Moke gave evidence that:

*"The bustling hub of commerce at Kāwhia was very important to the Crown for many reasons including its importance as a West Coast port and its position on the edge of Te Rohe Pōtae and the Kīngitanga. When Governor Grey came to Kāwhia Hōne Te One showed that Ngāti Hikairo was initially open to this Crown interest in the harbour. However, in later times Bryce, who was known to have led the sacking of Parihaka, came to Kāwhia to protect the harbour beacons and he brought an armed constabulary. The Crown showed how very keen it was to establish a town at Kāwhia, not for any economic purpose but to send a message to the Kīngitanga and King Tāwhiao who at the time lived in Kāwhia."*⁴¹⁰

350. As set out in the claimant evidence and other sections of these submissions the "golden era" of commerce for Ngāti Hikairo came to an end with the raupatu and land alienation inflicted on the iwi by the Crown in breach of the Treaty particularly from the 1860s. Moreover, it is submitted that the Crown's economic aspirations were tied up with political imperatives and a desire to control the Kīngitanga and its adherents such as Ngāti Hikairo.

351. Pohepohe Mac Bell described how the impacts of the confiscation were disastrous for Ngāti Hikairo noting that the impact was immediate:

*"[...] researchers have discussed the matter of "urban drift" as a key cause of problems within Māoridom, but in my view some of the worst situations for Ngāti Hikairo, and other iwi of Te Rohe Pōtae, had existed well before those times. The confiscation saw lots of our people focused in little areas which were absolute hell-holes. Numerous whānau were crammed into kāinga surviving on small stretches of riverways. There was drinking and many associated problems. Our culture was slipping away. It was hell for some whānau. I am sorry to say that Whatiwhatihoe was such a hell-hole for a period."*⁴¹¹

⁴⁰⁹ Moke #N37 paragraph 9

⁴¹⁰ Moke #N37, paragraph 10

⁴¹¹ Bell # K11, paragraph 20

4.5.3 Crown Treaty breaches were key factors

352. It is submitted that the various Treaty breaches were key factors which explain the poor social and economic circumstance of the iwi. Ngāti Hikairo witnesses described how their people were simply not equipped to deal with changing economic circumstances particularly when substantial parts of their land base were confiscated and alienated.

353. It is submitted that the key point is that Crown Treaty breaches created a circumstance where Ngāti Hikairo were unable to avoid later socio-economic deprivation relative to non-Māori. For example, the loss of the most arable lands within the confiscation district and the Pirongia/Waipā area, coupled with the increasing partitioning of blocks into smaller uneconomic units, created a circumstance where Ngāti Hikairo faced hardship as a consequence of a changing economy where more land was necessary for farming and other agricultural pursuits.

4.5.4 The Crown did not do enough to help

354. In Ngāti Hikairo's view the Crown did not do enough to assist or help Ngāti Hikairo to overcome these difficulties. Indeed it is submitted that it was the initiatives of the iwi themselves that ensured that they did survive. For instance, the annual Poukai was first held at Whatiwhatihoe in 1884 and the following year at Te Waro in Kāwhia.⁴¹² As staunch supporters and leaders of the Kīngitanga, Ngāti Hikairo rangatira had and continue to have a role in the movement and the annual hui. The Poukai was initially about reinvigorating support for the Kīngitanga but also to provide kai and support to the pouwaru (widowed), pani (orphaned) and rawakore (impoverished).⁴¹³

355. There is also much evidence that the whānau of Ngāti Hikairo shared food and supplemented their diets through gathering food from the local environment. Kīngi Pōrima recalled looking back on his childhood in the 1940s that in retrospect they lived in poverty compared to the Pākehā but

⁴¹² *Te Maru-ō-Hikairo* #A98, p292

⁴¹³ *Te Maru-ō-Hikairo* #A98 pp 291-294

*“we shared what we had from our various gardens, orchards and mahinga kai. If one person went fishing or to get pipi then such kai was shared around.”*⁴¹⁴ Of course, this sharing was a continuing customary practice, but the evidence is that there was a growing need among Ngāti Hikairo to gather kai to supplement their diet. It is submitted this was a necessary response to the worsening socio-economic situation of the iwi and the lack of any direct assistance from the Crown.

4.5.5 Health and poverty

356. It is also submitted that even these traditional sources of food were becoming harder to obtain and more depleted as the twentieth century unfolded. For example, Ngāti Hikairo have given evidence that the fisheries were becoming depleted and scarce and that the Crown has some responsibility for allowing activities that exacerbated the diminution of the resource.⁴¹⁵ It is submitted that a net result of the growing deprivation of Ngāti Hikairo was the migration of many of the iwi away from their tribal lands in search of work. The research of Dr Hearn has accurately described the urban migration that occurred during the 1950s from Te Rohe Pōtae.⁴¹⁶ There was also evidence of recent urban migration since 2000 as iwi members chase work opportunities.⁴¹⁷ Ms Pikia understood the Crown’s “Limited Employment Locations” policy does not allow people living in Kāwhia to receive unemployment benefits, as they are deemed to be unavailable for work. She believed that when Ngāti Hikairo of Kāwhia were applying for “job seeker” benefits the officials considered that Kāwhia had no work and therefore they could not be shown to be actively seeking work.⁴¹⁸ Ms Pikia guessed that the Crown’s motive was to restrict the movements of beneficiaries to isolated rural areas where there is no work, but she highlighted the problem of this policy is that Ngāti Hikairo want their people to return to their whenua.⁴¹⁹

⁴¹⁴ Pōrima #N29 paragraph 12

⁴¹⁵ Van Tol and Simon, #N48

⁴¹⁶ Hearn, #A146, pp 520-3

⁴¹⁷ Pikia, #N10, p9

⁴¹⁸ Pikia, #N10, p9

⁴¹⁹ Pikia, #N10, p9

357. It is submitted that these recent Crown policies in relation to employment benefits have clearly hampered those members of the iwi who wish to return to their tūrangawaewae.
358. The deprivation of Ngāti Hikaro was not simply confined to economic problems. There is also evidence of poor health among Ngāti Hikairo compared to non-Māori and evidence of an inadequate response to this by the Crown.
359. From as early as the 1830s Ngāti Hikairo were concerned at the changing situation in Kāwhia in that period, the presence of tobacco and the addictive nature of it with Ngāti Hikairo tupuna, Matirewhaia-ki-te-rangi, composing a haka wāhine about these matters in 1834.⁴²⁰ The Tribunal will recall witness Hinga Whiu performing this haka at the Ngāti Hikairo hearing in week 7 of the Inquiry hearings.
360. Hinga Whiu also raised the issue of the poor health of Ngāti Hikairo people and the impact of smoking in her evidence.⁴²¹ She noted that of her mother's 13 brothers and sisters, her mother was the only one still alive as all had passed away from preventable smoking related diseases in their 50s and 60s. The impact of this has been immense for Ngāti Hikairo because:
- “they were all fluent speakers of te reo and repositories of our tribal histories and tikanga...They lived a life grounded in tikanga. We are still feeling the effects of the loss of this generation now on our paepae and among our kaikaranga.”⁴²²*
361. It is submitted that the Treaty required the Crown to ensure that Ngāti Hikairo had the same rights and privileges as other citizens of New Zealand. However, the Crown failed to care for the health of Ngāti Hikairo and once it was known that smoking was causing damage it took many years for the Crown to respond.

⁴²⁰ *Te Maru-ō-Hikairo* #A98, p 213

⁴²¹ Whiu #N17, pp 7-12

⁴²² Whiu #N17, paragraph 30

4.5.6 Alcohol and Te Pitihana

362. The evidence of Frank Thorne on Te Pitihana discusses the damage caused by alcohol abuse within Ngāti Hikairo. He said:

*“Ever since alcohol has been introduced into our rohe it has been destroying the social make-up of society. Alcohol promoted unruliness and un-mana enhancing behaviour in some of our tupuna”.*⁴²³

363. Mr Thorne discussed the problems that were occurring in Whatiwhatihoe and in Kāwhia as Ngāti Hikairo gained access to alcohol.⁴²⁴ Accordingly he said:

*“It is not surprising given the problems with alcohol at Kāwhia that our marae, Waipapa, became the first explicitly alcohol free marae in the region. Waipapa became waipiro kore about 1950 and there is still an old sign at the marae stating “Kāore e whakaaetia te Waipiro” from that time”.*⁴²⁵

364. He also gave evidence that some of the Rangatira who met Governor Jervois at Ōmiti in March 1884 shared concerns that there should be no liquor licences in Kāwhia township.⁴²⁶ Accordingly, Ngāti Hikairo believe that alcohol was part of the agreements of 1883 to 1885 and the key point was that iwi want to be able to control alcohol within Te Rohe Pōtae.⁴²⁷

4.5.7 Provision of health services and health outcomes

365. It is submitted that the evidence of Ngāti Hikairo demonstrates that the Crown has failed to provide adequate health and social services for Ngāti Hikairo. Dr John Burton, the local Kāwhia General Practitioner, gave evidence that Māori at Kāwhia are more likely to have problems with asthma and develop chronic obstructive airways disease (COAD) or ischaemic heart disease (IHD). Actual numbers do show an increase in the incidence of asthma, but there is a lower percentage of Māori patients who have CORD or IHD. However, he also stated that:

“the lower percentage of Māori patients with CORD and IHD probably reflects the fact that these are diseases of older people and that most (68%) of patients aged over 60 are non-Māori. This raises the question as

⁴²³ Thorne #111, p22

⁴²⁴ Thorne #111, pp 22,23

⁴²⁵ Thorne #111, p24

⁴²⁶ Thorne #111, p24

⁴²⁷ Thorne #111, p24

to why there are fewer elderly Māori in Kāwhia. Māori seem more likely to “return” to Kāwhia when they become old, whereas non-Māori are more likely to leave Kāwhia to go into a rest home when they age....is another part of the reason that Māori are more likely to die younger?”⁴²⁸

366. Dr Burton observed that when he first came to Kāwhia (21 years ago) he had been intrigued at how often a big thing was made of people’s 60th birthdays. He concluded that: *“people have learnt by experience to celebrate this decade as the risks that the 60 year old will be disabled or deceased by the next decade are high.”⁴²⁹*

4.5.8 Social Issues among Ngāti Hikairo

367. A further issue for Ngāti Hikairo is the serious social issues that we submit have arisen from loss of land, culture, health and social dislocation. Venus Daniels filed a poignant brief of evidence on the struggles she has endured as a rangatahi of Ngāti Hikairo who has spent 20 years in and out of the criminal justice system.⁴³⁰ She spoke in her evidence of the loss of the reo and the split in the whānau that occurred when her grandparents passed away. She also spoke about life in Hamilton in the 1980s where gangs, drugs, child abuse, rape and physical abuse surrounded her and her peers and whānau. She maintained that:

“These are the signs of the breakdown of our social structures that used to maintain and sustain our whānau...I have a deep whakapapa connection to Ngāti Hikairo but we have no lands. We don’t have any land or farms or anything else to return to....”⁴³¹

4.5.9 Conclusion

368. It is submitted that all of this evidence points to the growing deprivation of the iwi through the twentieth century to now and highlights the claims of Ngāti Hikairo that the Crown failed to ensure they retained a sufficient economic and land base and that the Crown failed to uphold its obligations to the iwi under the Treaty.

369. As the late Pohepohe Mac Bell observed, the roots of the social and

⁴²⁸ Burton # N19, paragraph 4

⁴²⁹ Burton # N19, paragraph 11

⁴³⁰ Daniels #N13

⁴³¹ Daniels #N13 paragraphs 8, 13 and 14

economic troubles for Ngāti Hikairo started with the raupatu:

*“The generations after the confiscation worked hard with what little they had. Still our whānau were always struggling in poor housing and without running water. Many resorted to stealing to keep up and this became a way of life. I really do believe that the loss of land was a key source of these troubles.”*⁴³²

⁴³² Bell #K11, paragraph 21.

5.Environmental claims

5.1 Introduction

370. In this section we outline the evidence relating to the Ngāti Hikairo – the Kāwhia harbour, rivers and lakes customary interests claim and other environmental matters raised in the general claim.⁴³³ This section looks at environmental effects that Crown breaches have had on the lands and waterways within Ngāti Hikairo's rohe, including the Kāwhia harbour, the various Kāwhia and the Ngāroto lakes, Lake Mangakāware, the Ōpārau, Ōkupata, Mangahoanga, Ōmanawa, Mangakōtukutuku, Waikuku, Raukawa (Mangaora), Waipā, Manga-o-Tama, Mangauika, Mangakarā, Managawawa, Ngātaiparierua, Mangapiko Rivers and Streams and their tributaries.

371. The Claimants acknowledge that other iwi of Te Rohe Pōtae and kindred Waikato tribal groups claim and hold interests and associations with the Kāwhia harbour, the Kāwhia lakes, the Ngāroto lake and the other rivers/lakes of the region.

372. The Statement of Claim notes that the awa and Moana of Ngāti Hikairo are an undivided entity or single whole that cannot be divided into adjacent lands and catchments, springs, pools, banks, beds and waters. Therefore the awa and Moana include all of the adjacent lands and catchments, beds, and foreshores, streams, rivers, tributaries, riverbeds, riverbanks, springs, waters, swamps, flora, fauna (including fisheries), minerals, and resources.

373. The claimants gave evidence during the hearings in relation to their relationship to and the significance of key land and water marks within the Ngāti Hikairo rohe including:

- i. Kārewa Island
- ii. Kāwhia Harbour
- iii. Pirongia Maunga
- iv. Pukehoua
- v. Ōpārau and tributaries

⁴³³ Wai 1112, #1.2.98 and Wai 1113, #1.2.99

- vi. Waipā River and tributaries
- vii. Manga-ō-Tama Stream and tributaries
- viii. Mangapiko Stream
- ix. Mangauika Stream and tributaries
- x. Mangakarā Stream and tributaries
- xi. Mangawawa Stream and Tributaries
- xii. Ngātaiparierua Stream and Tributaries
- xiii. Lake Mangakāware
- xiv. Lake Ngāroto
- xv. Lake Parangi
- xvi. Mangawhero Lagoon
- xvii. Te Puia Springs, and
- xviii. Tasman Sea coastline (including seabed) between Te Puia and Raukūmara.

5.2 Failure to Protect the Physical and spiritual Health of the Kāwhia harbour, the lakes and rivers within the rohe of Ngāti Hikairo.

374. The Statement of Claim alleges that the Crown has failed to:

- (a) protect and respect the spiritual health, mauri, wairua, or life force of;
- (b) protect, provide for, respect, or recognise Ngāti Hikairo's relationship with;
- (c) adequately protect the taniwha and ngārara of;
- (d) protect, provide for, respect, or recognise the exercise of Ngāti Hikairo customs, necessary to protect, respect, and keep in balance the spiritual health in respect of;

the Kāwhia harbour, the Kāwhia lakes, the Ngāroto lake and other lakes, the Ōpārau and other rivers and other waterways within the rohe of Ngāti Hikairo.

375. Further the Claim states that the Crown has, both directly or indirectly, caused, permitted or allowed the degradation of the spiritual and physical health of the Kāwhia harbour, and with the lakes, rivers, and other waterways within the rohe of Ngāti Hikairo.

376. These submissions now canvass the evidence that the iwi have presented to this Tribunal in support of these claims.

5.2.1 Pollution by sewage, farming effluent, rubbish dumping.

377. Mr Thorne gave evidence of several examples of pollution in his evidence and he identified how the Crown was ultimately responsible. In Pirongia he spoke of the issue of leakage from septic tanks:

*"Our local kaumātua have described Pirongia Village as a "septic bomb". The whole town is set up on septic tanks. While there are now strict conditions about cross-leasing, and subdividing due to the large volume of septic tanks in such a small concentrated area, this was not always the case. The Pirongia Village already has a large concentration of septic tanks within a narrow plateau above the Waipā and Mangapiko awa. Our people believe that septic tanks are leaking into the surrounding rivers and that this has been happening for a long time."*⁴³⁴

378. In his evidence Mr Thorne expressed Ngāti Hikairo concerns about overflows of pollutants into the Mangapiko awa:

- (e) from historic dumping of offal from a stock slaughter house (near Pirongia Cemetery) into the awa;⁴³⁵
- (f) from the commercial areas in Te Awamutu, both historic and current, in particular from the discharges from the Dairy Factory;⁴³⁶ and,
- (g) from the location of Te Awamutu's Sewage plant being too close to the Mangapiko awa and the use of the water from the awa for that purpose.⁴³⁷

379. The Pirongia dump was located above and close to the Mangapiko awa where: *"a large open pit was utilised to dump waste. Another large quarry pit was used to extract sand for roading and other purposes"*.⁴³⁸

380. In respect of the Dairy factory Mr Thorne said the wider community also voiced concerns:

"Even local farmers were alarmed and complained of the discharges. Our people understand that warnings were apparently issued to the Dairy Factory. Ngāti Hikairo have traditions of a hot water spring, known for its spiritual and healing properties, on the site of the Dairy Factory

⁴³⁴ Thorne, #N51 p16

⁴³⁵ Thorne, #N51 p17

⁴³⁶ Thorne, #N51 p17

⁴³⁷ Thorne, #N51 p17

⁴³⁸ Thorne, #N51 p18

*(Fonterra). We believe it has been destroyed. It was also regarded as a site for uruuruwhenua, as Ngāti Hikairo and others passed through tribal rohe.*⁴³⁹

381. He gave further evidence of the pollution over time from excessive forestry clearance, poor farming practices, and the discharge of sewage, farming effluent, and storm water in to the Waipā, Mangapiko, Ngāroto and Manga-ō-Tama and other waterways leaving Ngāti Hikairo and neighbours with polluted, muddy, contaminated waterways devoid of life and life giving qualities.

382. In respect of significant site of Whatiwhatihoe, which has been alienated from the iwi and is now farmed and subject to urban development, Ngāti Hikairo evidence is that there was a puna there, *Te Tekaumārua*, which was once used for ceremonial practices:

*"It played an important role for Ngāti Hikairo and the Kīngitanga. It played a central role in the first ever poukai, that was held at Whatiwhatihoe in 1884. The waters were utilised and referred to in proceedings of the poukai. The initial name for the poukai, was actually Te Punakai which came about due to the relationship of the hākari to the puna. This is referred to in the pātere "Ka mau tā Whakamarurangi ki tōna ringaringa" which refers to the puna wai, puna kai, puna tangata. This puna is believed to have been destroyed by farming practices.*⁴⁴⁰

5.2.2 Te Wai o Rona

383. Kāwhia had many springs, which by tradition come from a single source.

384. The claimants say the Crown has failed to protect Te Wai o Rona and has allowed many of the Kāwhia lakes and the Ngāroto lake, to be drained or partly drained and this has degraded their spiritual and physical health.⁴⁴¹ These springs were a key part of the water supply, and a key part of community life for Ngāti Hikairo. The proverb associated with the water supply, Te Wai o Rona, with an added emphasis on ongoing kaitiakitanga, is: *'ka mimiti noa Te Wai o Rona, ka whērā hoki te mana ki te whenua.'*⁴⁴²

385. Mr Jack Te Papi Te Onehahau Cunningham gave evidence before the

⁴³⁹ Thorne, #N51 p17

⁴⁴⁰ Thorne, #N51 p18, 19

⁴⁴¹ Belgrave *et al*, #A76, p222.

⁴⁴² Belgrave *et al*, #A76, p20; Berghan, #A60, pp 275.

Tribunal of the significance of the springs and lakes to Ngāti Hikairo and the damage caused to them by Pākehā practices, which has caused many of them to dry up.

"Ka kōrero au i tēnei wā, mō ngā punawai, me ngā roto o Kāwhia. Mai i te moana o Aotea i Hawaiki, ki te moana o Kāwhia ki Te puna a Rona. Kotahi anō te puna wai e pupū ake ana, i ngā take o ngā onepu o Kāwhia. Koinei hoki te take i noho ai, aku tūpuna i te hauauru o te moana. Kei te maha hoki o te wai e pupū ake ana i te whenua. Ngā wai o Kāwhia mai i Hawaiki ki te puna a Rona, kotahi anō te puna e kore e mimiti.

KI WAIWAI HOPUAPUA HE MANAWA WHENUA E KORE E MIMITI!"⁴⁴³

386. The puna remaining are the principal source of Kāwhia's Town Water supply, creating further tensions between the puna as a Ngāti Hikairo wāhi tapu and the puna as a resource for the wider community.⁴⁴⁴

387. Counsel submits that this evidence highlighted the ignorance and lack of respect for the Ngāti Hikairo world view with the Pākehā need for land for farming and housing leading to draining of many water sources and meaning tangata whenua lost vital food sources and sacred places.⁴⁴⁵

388. In respect of Pouewe he says by way of powerful example of this disrespect:

"These springs are behind the Kāwhia hotel and the old Bank of New Zealand, one on the left side of the river, another on the right. These springs were for women who have given birth, to wash themselves and their babies and that kind of activity for the women. The river and the springs have been piped. The water that comes from the hill sides is lost and the rivers and sacred springs are no longer known there."⁴⁴⁶

5.3 Obliteration of significant customary resources, including the tuna fisheries

389. Gerrit Vantol and Whetu Simon both of whom are gazetted tangata kaitiaki⁴⁴⁷ for their marae, Waipapa and for the iwi, and part of the collective kaitiaki mandated in the area *"Te Ruawhango o Kāwhia Moana"*,

⁴⁴³ Cunningham, #N38 p3; English translation #N38(a), p3

⁴⁴⁴ Belgrave *et al*, #A76, p20; Berghan, #A60, pp 275

⁴⁴⁵ Cunningham, #N38(a) pp3-7

⁴⁴⁶ Cunningham, #N38(a) pp4,5

⁴⁴⁷ Fisheries (Kaimoana Customary Fishing) Regulations 1998

highlighted the concern felt by Ngāti Hikairo for *"the continued health and wellbeing of Kāwhia harbour and the protection of its fisheries from exploitation or depletion."*⁴⁴⁸

390. They gave evidence that in 2007 Ngāti Hikairo participated in a study with NIWA, (National Institute of Water & Atmospheric Research Ltd) published as: *"Environmental Values and Observations of Change, A Survey of Ngāti Hikairo-ki Kāwhia Moana."*⁴⁴⁹

391. It was designed to:

*"look at the nature of our relationship with Kāwhia Moana and to try and understand how and why the environment of the harbour has changed and is changing and to use that information to develop a tool for monitoring and managing the scale and impact of the changes."*⁴⁵⁰

392. The witnesses acknowledged that the report was preliminary only but said that the people who participated were those with intimate knowledge of the harbour:

*"The whanau who were involved in the study detailed the depletion and contamination of the resources in the harbour caused by introduced species like pacific oyster and black swans and the more intensive agriculture and development in the area. These resources that are suffering include important taonga such as Mohimohi, Kahawai, Kanae, Kingfish, Kutai, Pūpū, Tuna, Shark, Stingray, Tamure and Pātiki to name just a few. However, sedimentation, poor water quality, the introduction of exotic plant life and animals have all impacted upon the health of these kai and the ability of Ngāti Hikairo to gather these traditional kai. It is our view that the Crown has failed to protect these taonga of Ngāti Hikairo and accordingly has breached Te Tiriti in doing so."*⁴⁵¹

393. Ngāti Hikairo would like more detailed research to occur to improve the state of the moana.

⁴⁴⁸ Vantol and Simon, #N48, p2

⁴⁴⁹ Vantol and Simon, #N48(a),

⁴⁵⁰ Vantol and Simon, #N48, p3

⁴⁵¹ Vantol and Simon, #N48, p4

5.4 Ōpārau

*"It is without a doubt the most treasured and recognised with the iwi"*⁴⁵²

394. The Ōpārau river has always been considered an important food basket of Ngāti Hikairo providing all manner of types of kaimoana.⁴⁵³ This river is of great importance to Ngāti Hikairo as "[...] *since the 1860s it has been the most heavily occupied river of Ngāti Hikairo*".⁴⁵⁴ Mere Gilmore gave evidence of her knowledge of the Ōpārau river:⁴⁵⁵

"The name of the area "Ōpārau" comes from the fact that there were numerous villages, people and gardens there in the old days. There were many good uses for the water when I was growing up, for washing, fishing and for life."

*While I was growing up, there was an abundance of eels in the rivers. We used to go fishing using flax for our fishing line. We would attach a rock at the end of the line as a sinker. We would use meat as bait. We would then spit on the rock to bring us good luck."*⁴⁵⁶

395. However her evidence is that these waters are now polluted due to Crown actions.⁴⁵⁷ The iwi evidence was also that the Crown had allowed practices that had been detrimental to the mauri and well-being of the river and the tuna stocks have been over-fished with commercial fishing.⁴⁵⁸

396. In addition, it was stated that the Crown purchase of the Pirongia West 3A block in 1895 took more than 60 percent of the river, from the alluvial flats at Mātairimāro to the headwaters at Pirongia Maunga.⁴⁵⁹

5.5 Paretao (the Paretao Tribal Eel Reserve (Kāwhia S) and the Kāwhia H Tribal Reserve).

397. The claimants assert the Crown failed to recognise and protect the tuna fisheries of Ngāti Hikairo⁴⁶⁰ and in their Claim cited the case study of

⁴⁵² *Te Maru-ō-Hikairo*, #A98, p156

⁴⁵³ *Te Maru-ō-Hikairo*, #A98, p158

⁴⁵⁴ *Te Maru-ō-Hikairo*, #A98, p156

⁴⁵⁵ Gilmore, #N16(a), pp8,9

⁴⁵⁶ Gilmore, #N16(a), pp8,9

⁴⁵⁷ Gilmore, #N16(a), p9

⁴⁵⁸ *Te Maru-ō-Hikairo*, #A98, p159

⁴⁵⁹ *Te Maru-ō-Hikairo*, #A98, p158

⁴⁶⁰ also including those at Tokiwhati, Ōweka Lagoon, Mangauika and Whatiwhatihoe and Belgrave *et al*, #A76, p 360.

Paretao (the Paretao Tribal Eel Reserve (Kāwhia S) and the Kāwhia H Tribal Reserve). The claimants also assert that the Crown also failed to ensure that the legal owners of the reserves were regarded as trustees.⁴⁶¹

398. In the Kāwhia Block the Paretao lagoon was fed by the puna and this became a prized location for its tuna. The Paretao Tribal Eel Reserve (Kāwhia S reserve) was a 72:0:32 acre reserve established in 1892 to protect the interests of eight hapū of Ngāti Hikairo in the eel fishery of the Paretao lagoon. In addition there was the Kāwhia H Tribal Reserve. Both reserves were identified as inalienable and reserved as tribal reserves of Ngāti Hikairo under the trusteeship of selected trustees.⁴⁶²

399. In evidence Mr Cunningham said that the Paretao lagoon, which was famous for the many large holding pens for eels, was drained without consultation because it was regarded as a health hazard.⁴⁶³ That reference was also made in Court minutes relating to the partition of the block.⁴⁶⁴

400. Mr Thorne also cited a newspaper article from the New Zealand Herald of 1901 that welcomed the pending draining of the lagoon, stating that it would then make land available from for alienation (from Māori) and for additional "town purposes".⁴⁶⁵

401. In answers to questions of clarification in relation to the technical evidence, Belgrave et al confirmed that the draining of Paretao took place:

"The total area was 72a 0r 32p. The land was set aside as an eel reserve, but was not reserved to Ngāti Hikairo as a whole in trust, but to the eight original owners, despite the tuna being a resource for the tribe as a whole. Three acres were subsequently awarded to the Crown for survey costs on 8 February 1907. A lease for the remaining area was approved by the Waikato District Maori Land Board in favour of William W. Davis of Oparau in August 1907. The lease involved a rental of seven shillings per annum and was for twenty-one years with one right of renewal. At the hearing to approve the lease, Davis made it clear that he intended to drain the wetland. He also provided the board with a written statement by Dr Jenkinson 'to the effect that the swamp, which is situated between the

⁴⁶¹ Belgrave et al, #A76, p20; Berghan, #A60, pp 275.

⁴⁶² Belgrave et al, #A76, p20; Berghan, #A60, pp 275.

⁴⁶³ Cunningham, #N38(a) p5; also Belgrave et al, #A76, p20; Berghan, #A60, pp 275.

⁴⁶⁴ Thorne, #N53(d)/#A98(d), p5

⁴⁶⁵ Thorne, #N53(d)/#A98(d), p4

townships of Kawhia and Te Puru, was a grave menace to the health of the residents of both townships'. The health risks to the community would seem to be part of the case made to the board, but the primary justification for draining Paretao was to turn the wetlands into productive pasture."⁴⁶⁶

402. Mr Thorne clarified further, that the Native Land Court identified the trustees of Kāwhia S as nominal owners holding on behalf of the iwi, and subsequently determining the trust awarding the block to more individuals – *"the owners of the Kāwhia Block as ordered at the partition dated 23 March 1889"*.⁴⁶⁷ The consequence was that the owners were able to individually alienate their interests in the reserve once it was dry land.⁴⁶⁸

403. In the answers to questions of clarification by counsel, Belgrave set out that while the Ngāti Hikairo view was that the lake was held in trust due to the eel fishery for the whole iwi, the Court, the District Land Board and the politicians did not see it that way and no evidence of a trust was found.⁴⁶⁹

404. As Belgrave *et al* said:

*"This draining of Paretao illustrated the vulnerability of collectively owned and used resources under the native land laws, particularly lands set aside as fishing reserves. By setting aside an eel reserve to a limited number of owners, without formally recognising their role as trustees for Ngāti Hikairo in managing the land as an eel reserve, the title provided no protection for this valued fishery."*⁴⁷⁰

405. Ōweka was another swampy lake split in half by the Kāwhia M and Kāwhia P blocks and a source of tuna. Ngāti Hikairo's connection with Ōweka is described in *Te Maru-ō-Hikairo*:

"The lake was in constant use by Ngāti Hikairo right up until the first decade of the 20th century at which point the Local Government decided to drain it. It has been described by Ngāti Hikairo as a small but deep lagoon having several mahinga kai on its shores. It was fed by numerous springs including what is now the Kāwhia Water Supply, thus it was an abundant source of freshwater on the Kāwhia peninsula for many Ngāti Hikairo.

*Its primary source of water was the Waioeka. It was heavily relied upon for eeling and harvesting various freshwater fish and shellfish species. It is now an urban/industrial zone."*⁴⁷¹

⁴⁶⁶ Belgrave, #A64(b), #A76(c), p18

⁴⁶⁷ Thorne, #N53(d)/#A98(d), p5

⁴⁶⁸ Thorne, #N53(d)/#A98(d), p5, 6; Belgrave *et al*, #A76, p20; Berghan, #A60, pp 275.

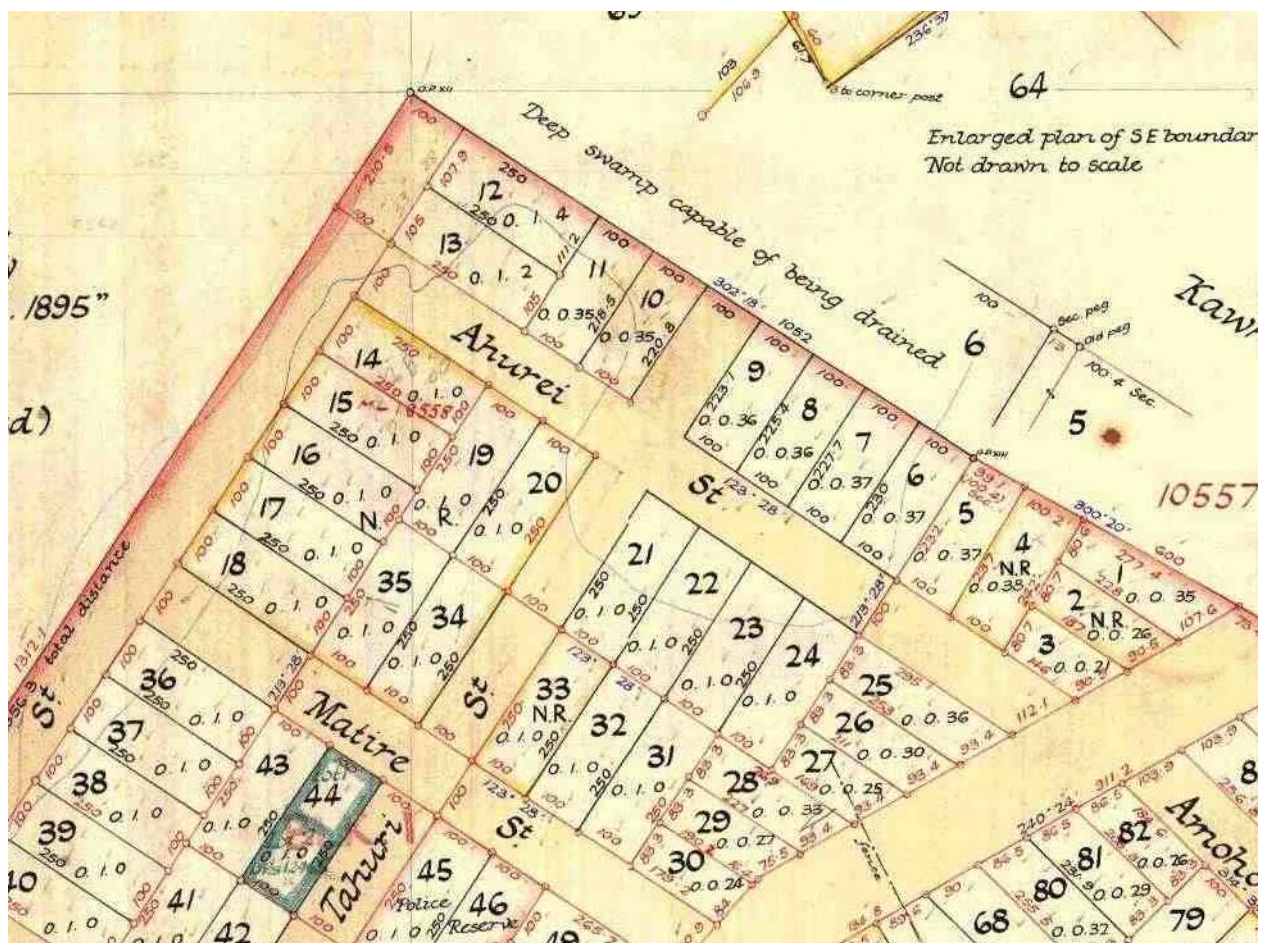
⁴⁶⁹ Belgrave *et al*, #A64(b), #A76(c), p18

⁴⁷⁰ Belgrave *et al*, #A64(b), #A76(c), p19

⁴⁷¹ *Te Maru-ō-Hikairo*, #A98, p152

406. It was drained about the same time as Paretao. In Jack Cunningham's evidence he talks of the abundance of eels and watercress there and he asked: " ...Now what has become of the waters they talked about? They are dry, desolate because of the excavation of springs and creeks."⁴⁷²

407. Below is an extract of the map of Te Papa o Kārewa township, focusing on the Ōweka lagoon. This map was put before the historians Bassett and Kay in cross-examination.⁴⁷³ They were asked why the surveyor would show roads going through a lagoon and responded that it suggests that when the lake was drained the road would go through it.⁴⁷⁴



408. It is submitted that the map and the evidence before this Tribunal shows that right from the beginning there was an intention to drain the Ōweka lagoon.

⁴⁷² Belgrave *et al*, #A76, p20; Berghan, #A60, pp 275.

⁴⁷³ Cross-examination bundle, #O18, p3; ML 12756

⁴⁷⁴ Transcript of Eighth Hearing Week, #4.1.13, p675

5.6 Ngāroto Lake

409. The Ngāroto lake is the ancestral homeland for Ngāti Hikairo. The lake is a very sacred lake as it was the site of a large number of battles and there are several wāhi tapu associated with the lake, as set out in an interview with Frank Thorne for Professor Michael Belgrave's technical report :

*Because it's our homeland (there's people that talk about it as the kidney or the lungs and in some instances the heart of Ngāti Hikairo). So it's not just the physical protection but it's the intrinsic and the wairua side of it that they're trying to protect. ... So as far as we are concerned, whatever happens on [the lake] is affecting the water supply and ... mana because if somehow Ngāroto dries up and disappears then the boundary of us and also the heart, one of the arteries ... becomes null and void.*⁴⁷⁵

410. Ngāti Hikairo acknowledges Ngāti Maniapoto and Ngāti Apakura also have customary connections with the lake.⁴⁷⁶

411. The lake was declared Crown land when it was confiscated in 1865. Prior to the turn of the century the lake, in its natural condition, had an area of 218ha (540ac). By 1907, this had been reduced through drainage "improvement" to about 145ha (360ac). Further lowering of the drainage outfall to the Manga-ō-Tama Stream continued until 1962 when the Ngāroto Drainage Board reduced the size of the lake to 89ha (220ac). The Regional Water Board established a minimum level in 1969 and the minimum lake area was increased to 97ha (240ac). However by 1995 this had decreased further to 74.86ha, which is around the present day size.⁴⁷⁷

412. Several Pā were made within the lake as man-made islands. Some are now surrounded by dry lands and are accessed and grazed by stock. Ngāroto Lake is directly linked to the well-known Hingakākā battle, also referred to by Frank Thorne in his interview:

"A Ngāti Hikairo tradition maintains that it is not the distribution of the fish that was the cause of Hingakākā, but rather, an attempt to secure the taonga held at Ngāroto, and that the attempt was directly related to Hikairo and Tiriwa, both invading Kāwhia, and the disappearance of taonga from the Te Ahurei Whare Wānanga in Kāwhia. Hingakākā was the result of a power struggle fuelled by a desire to control the houses of learning and the taonga held by them. Ngāti Hikairo tradition further maintains that Uenuku,

⁴⁷⁵ Thorne, cited in Belgrave et al, #A76, p45

⁴⁷⁶ Belgrave et al, #A76, p30

⁴⁷⁷ Belgrave et al, #A76, p47

*the whakairo removed from Ngāroto represents fertility and the harvesting of food.*⁴⁷⁸

413. Evidence of the importance of Ngāroto to Ngāti Hikairo and details of the battle were also provided in the evidence of Manaoterangi Forbes.⁴⁷⁹

414. Ngāti Hikairo are most concerned that the water quality is poor and Ngāti Hikairo's kaitiaki role is diminished by the local Waipā Council's insistence on engaging only with Ngā Iwi Toopū o Waipā a collection of iwi, rather than the directly affected tangata whenua.

5.7 Pōhutukawa

415. Ngāti Hikairo have given evidence that certain of the large Pōhutukawa at Kāwhia are highly sacred.⁴⁸⁰ Mr Moke stated of the Pōhutukawa, Tangitekorowhiti, *"This rākau is so revered that many would not dare step in its shadow"*.⁴⁸¹

416. In Bassett & Kay's report on the impact of the Native Townships legislation, in respect of the Kārewa township, it was noted that the owners had insisted that Pōhutukawa be protected from being cut down and that this was an ongoing condition to protect them.⁴⁸² The Surveyor explained that the:⁴⁸³

"owners of the land make it a condition that the trees are not to be injured in any way and the Government has always ordered that the trees are not to be touched"

417. In *Te Maru-ō-Hikairo*, it is said that Pōhutukawa at Pukerua:

"... were revered and acknowledged with the utmost respect. These pōhutukawa are no longer standing; they were cut down and removed by leasees wishing to improve their titles. The reasons for their significance, and the respect they demanded, have been lost with their removal. However, it is known within Ngāti Hikairo that all pōhutukawa on the Kāwhia Peninsula, of which there were only a few, are known to have had

⁴⁷⁸ Thorne, cited in Belgrave et al, #A76, p45

⁴⁷⁹ Forbes, #N31, pp 23-25

⁴⁸⁰ *Te Maru-ō-Hikairo*, #A98, pp 302-5; Moke, #T37, p4

⁴⁸¹ Moke, #T37, p4

⁴⁸² Bassett & Kay, #A62, pp74,75

⁴⁸³ Bassett & Kay, #A62, pp74-75

*burial grounds in the root systems, and several of them are known to have been associated with birthing and other ceremonies.*⁴⁸⁴

418. The Ngāti Hikairo evidence is that, at odds with this condition, many of the Pōhutukawa are now gone. In addition to the cutting of the Pōhutukawa at Pukerua, Mr Moke gave evidence that “[...] *all of the sacred Pōhutukawa in front of Paringatai are gone*”.⁴⁸⁵

419. The following extract of the map of Te Papa o Kārewa township, focusing on Paringatai and Pukerua, was put before the historians Bassett and Kay in cross-examination.⁴⁸⁶ The map below shows the Pōhutukawa clearly mapped by the surveyor. In particular, the map shows the Pōhutukawa at Paringatai (being those along the coastline at “Kaora Street”) and those trees also at Pukerua (being those off Waiwera Street on lots 66 and 65).

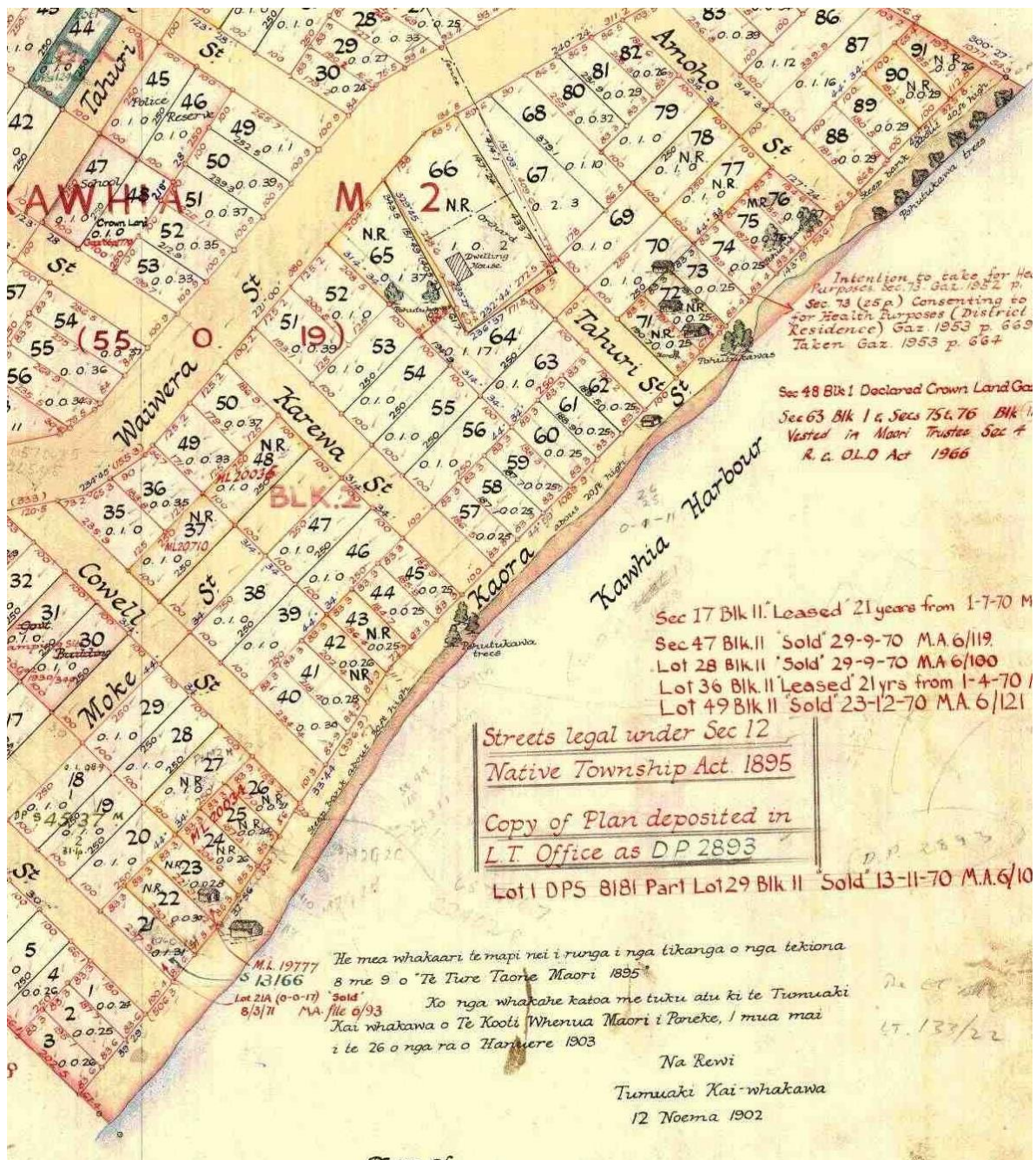
420. Ms Bassett agreed under cross-examination that it was unusual to have the Pōhutukawa trees specifically labelled in such a map.⁴⁸⁷ It is submitted that this map, drawn up for the Native Township, provides further clear evidence that the Crown was on notice that the Pōhutukawa were of great importance but also of their precise locations. The evidence is that despite their preservation being a condition of the Native Township’s establishment and their clear depiction in the survey plan, many have been cut down.

⁴⁸⁴ *Te Maru-ō-Hikairo*, #A98, p302

⁴⁸⁵ Moke, #N37, p6

⁴⁸⁶ Cross-examination bundle, #O18, p3; ML 12756

⁴⁸⁷ Transcript of Eighth Hearing Week, #4.1.13, p675



421. Further in answer to questions of clarification, Belgrave et al⁴⁸⁸ said they believed there is no connection between this “condition” and any subsequent Crown efforts to protect coastal Pōhutukawa they identified.⁴⁸⁹ In our submission the evidence suggests that the iwi relied upon a condition, one that the Crown immediately forgot.

⁴⁸⁸ Belgrave et al, #A64(b), #A76(c), p16

⁴⁸⁹ Belgrave et al, #A64(b), #A76(c), p16

5.8 Failure to recognise Ngāti Hikairo tino rangatiratanga and kaitiakitanga of Kāwhia harbour, and the lakes and rivers of the rohe of Ngāti Hikairo.

422. Counsel submits that at 1840, Ngāti Hikairo exercised tino rangatiratanga and kaitiakitanga over the environment within its rohe including the Kāwhia harbour, and over the lakes, rivers, and other waterways within the rohe of Ngāti Hikairo.
423. It is further submitted that in respect of the Kāwhia harbour, the lakes, rivers, and other waterways within the rohe of Ngāti Hikairo, that the Crown has failed to recognise Ngāti Hikairo tino rangatiratanga or kaitiakitanga and that Ngāti Hikairo never ceded that rangatiratanga or kaitiakitanga.⁴⁹⁰
424. Further the Crown has failed to recognise the exercise of Ngāti Hikairo customs, necessary to protect the spiritual health of the Kāwhia harbour and over other waterways within the rohe of Ngāti Hikairo.
425. Evidence was provided by Ngāti Hikairo witnesses that offer examples of the above Treaty breaches.

5.8.1 Crown Statutory regimes

426. The claimants submit that various statutes, policies, practices, including in particular the Resource Management Act 1991 (RMA) have undermined Ngāti Hikairo's ability to maintain its exercise of tino rangatiratanga and kaitiakitanga.
427. Dr Roma Mere Roberts' evidence sets out the iwi's aspirations to give effect to its role and what is sought from the Crown:

"To achieve this aim they wish to give expression to the responsibilities they have as kaitiaki to sustain the mauri of their environment, upon which their cultural, social and economic future is dependent. But the full expression of kaitiakitanga requires recognition of the tribe's tino rangatiratanga and mana whenua status over its entire rohe so that all who

⁴⁹⁰ The Crown's acknowledgement that it required tangata whenua permission to open the harbour for wider use is admission that tangata whenua held tino rangatiratanga and kaitiakitanga post 1840 and did not cede that.

are willing can participate in the responsibilities as well as partake of the rights that attend this relationship."⁴⁹¹

428. She states how the major problem with the RMA is the "Treaty of Waitangi Clause" section 8 of the Act and how in the development of the legislation, *"efforts were made by Maori to provide a strong Treaty statement"*⁴⁹² but that this was rejected by the Cabinet and in the end the resulting clause, that: *"all persons shall take into account the principles of the Treaty of Waitangi" is still regarded by many as 'low octane' and less than that in the Conservation Act 1987"*.⁴⁹³

429. Dr Roberts further notes the lack of any Treaty obligation in the Local Government Act 2002 on local authorities.

430. In these closing submissions in respect of iwi identity, counsel has outlined the evidence of Dr Roberts and Mr Spelman which summarises the difficulties that Ngāti Hikairo has endured in constantly battling with local government, in the main without success, to have its tino rangatiratanga and kaitiakitanga in its rohe acknowledged in management and care of the resources controlled under this legislation.

5.9 Mangauika Water Works Public Taking

431. The Mangauika B2s2 Block is located on the upper slopes of Pirongia Maunga and has the Mangauika Awa passing through it. The Mangauika watershed was taken compulsorily for water purposes in the 1970s.⁴⁹⁴ Pirongia maunga itself as a symbol of Ngāti Hikairo identity.⁴⁹⁵ And Mangauika Awa is an important ancestral river of Ngāti Hikairo. It has many wāhi tapu associated with it.⁴⁹⁶

432. The water supply for Te Awamutu had been drawn for some years from the Mangauika Awa below the Mangauika B2s2 Block. In *Te Maru-ō-*

⁴⁹¹ Forbes, #N47, para 11

⁴⁹² Roberts, #N47, para 20

⁴⁹³ Roberta, #N47, para 20

⁴⁹⁴ Thorne, #N53 p10; David Alexander, Public Works and other takings in Te Rohe Pōtae District, #A063, p258, 259.

⁴⁹⁵ Thorne, #N51 p23l; *Te Maru-ō-Hikairo*, #A98, p128-137

⁴⁹⁶ *Te Maru-ō-Hikairo*, #A98, p162-164

Hikairo it is set out how the Council decided to compulsorily take the Mangauika 2Bs2 Block by public works and cited the reason for that being that the Ngāti Hikairo owners of the Block had (legitimately) carried out some logging on the block and this had affected the water supply downstream. The timber resource had been identified by the Waipapa Marae Committee, as a primary source of revenue via timber leases to fundraise for a new whare.⁴⁹⁷

433. Counsel submits that the Crown failed to consider alternative tenure options before taking the Mangauika B2s2 Block for waterworks.

434. The Council could simply have sought to reach an agreement with the Ngāti Hikairo owners to protect the water supply.⁴⁹⁸ Ngāti Hikairo remain distressed that the Council did not seek to come to some sort of agreement - that is, to take less than the freehold title for the Mangauika 2BsB block (i.e leasehold interest or easement).⁴⁹⁹

435. More recent efforts by Ngāti Hikairo to gain recognition of its kaitiaki role in respect of this water taking from the Mangauika Water Supply, and also from Te Rore Bore, have been unsuccessful. The frustrations with the RMA process were highlighted in *Te Maru-ō-Hikairo*:

"The process itself was designed more around raising an awareness of tangata whenua, rather than to engage with tangata whenua, and actively seek participation in the management of the Water Supply".⁵⁰⁰

5.10 Waipā River

*Ko Te Rore te whenua,
ko Pirongia maunga,
ko Mangauika te mānia*

*Te Rore is the land,
Pirongia is the mountain,
Mangauika is the fertile plain*

436. Mr Thorne gave evidence about the significance of the Waipā River to

⁴⁹⁷ *Te Maru-ō-Hikairo*, #A98, p162-164

⁴⁹⁸ Alexander, #A63, p20

⁴⁹⁹ *Te Maru-ō-Hikairo*, #A98, p162-164; Alexander, #A63, p20

⁵⁰⁰ *Te Maru-ō-Hikairo*, #A98, p162

Ngāti Hikairo, its long history of association with the awa and the struggle the iwi faces to retain control of its taonga.⁵⁰¹

437. He identified significant wāhi tapu and wāhi tupuna related to the awa and described the desecration of these sites.⁵⁰² In particular Mr Thorne noted that the significant pā site Mātakitaki, now in Council ownership as a public domain, is leased for farming, with detrimental effect to the site.⁵⁰³

438. Further Mr Thorne's evidence is that the Crown by statute has denied Ngāti Hikairo tangata whenua status in respect of the awa and its tributaries and excluded the iwi from the management regime.

*"Then the Waikato River Settlement seems to have cemented Waikato-Tainui as the authority over the Waipā River to north of the Pūniu, and the Waipā River Settlement, determined Ngāti Maniapoto as the authority south of the Pūniu River."*⁵⁰⁴

439. In counsel's submission this is a breach of Te Pitihana/Te Ōhākī Tapu and the agreements with Ngāti Hikairo as an independent iwi.

5.11 Customary fisheries and resources

440. Counsel submit that the Crown has failed to protect Ngāti Hikairo's proper access to their customary fisheries, foods and resources of the Kāwhia harbour, and of other waterways within the rohe of Ngāti Hikairo.

441. In particular, the Crown has imposed legislation, regulations and rules that regulate and restrict the customary gathering of kai moana and kai from the fresh water fisheries that breach the rights of Ngāti Hikairo to its customary non-commercial fisheries.

442. In particular the Claimants allege that the Crown has failed to adequately protect and provide for the exercise of customary Māori tuna fisheries within the rohe of Ngāti Hikairo.

443. The obligations of the Crown under the Treaty of Waitangi in respect of

⁵⁰¹ Thorne, #N51, pp8-11

⁵⁰² Thorne, #N51, pp11-13

⁵⁰³ Thorne, #N51, pp11-13

⁵⁰⁴ Thorne, #N51, p15

non-commercial tuna fishery in the waterways of Ngāti Hikairo are expressly recognised pursuant to s10 of the Treaty of Waitangi (Fisheries Claims) Act 1992.

444. Ngāti Hikairo have raised concerns in their claims about the Crown's approach to protecting their customary fisheries through the Quota Management System. The Total Allowable Commercial Catch is determined under s21 of the Fisheries Act 1996. Section 21 of the Fisheries Act 1996 reads as follows:

"Matters to be taken into account in setting or varying any total allowable commercial catch

(1) In setting or varying any total allowable commercial catch for any quota management stock, the Minister shall have regard to the total allowable catch for that stock and shall allow for—

(a) the following non-commercial fishing interests in that stock, namely—

(i) Māori customary non-commercial fishing interests; and

(ii) recreational interests; and

(b) all other mortality to that stock caused by fishing."

445. It is submitted that there is an issue in relation to how the Ministry determines the amount of catch that should be allowed for Māori customary fisheries. The Officials of the Ministry of Primary Industries agreed that in fact the Crown did not have accurate data on the actual customary fishing needs and the Ministry was making assumptions about those needs. Accordingly, it is submitted that the Minister makes an allowance for "*Māori customary non-commercial fishing interests*" but the Minister does not actually have any clear idea of what that catch is. Under cross-examination the officials accepted this problem, but answered also that "*the Minister makes an allowance based on expectations [...] of the amount that is likely to be taken in the coming fishing year*".⁵⁰⁵

446. It is submitted that the evidence of Ngāti Hikairo that there has been diminishing stocks and at times not enough for their customary fishing raises a question that the process is not working for Māori and that the Ministry needs to clearly identify what are the customary fishing needs of

⁵⁰⁵ Transcript of Fifteenth Hearing, #4.1.20, p1760

Ngāti Hikairo before determining the commercial catch under s21.

447. The evidence of Mr Halley of the Ministry for Primary Industries was, that the allowances for the Māori customary catch were not a “*cap on customary catch*”⁵⁰⁶. Under cross-examination Mr Halley did accept however that the commercial fishing catch could in practice reduce the amount of fisheries available for customary fishing.⁵⁰⁷

448. In evidence for the Ministry of Fisheries, Mr Halley states that Ngā Hapū o Te Uru o Tainui Customary Fisheries Forum “*includes Ngati Maniapoto and Waikato hapu*” and that this Forum had completed a plan which had been considered by “*Ngati Maniapoto and Waikato hapu*”.⁵⁰⁸ In cross-examination counsel asked this official why he had only focussed on “Ngāti Maniapoto and Waikato hapū”. His response was:⁵⁰⁹

“[...] earlier back in 1995 when we did the consultation process and with Te Puni Kōkiri. At that time we did consult with Raukawa and Hauraki. Both Hauraki and Raukawa decided to go on their own and there was only Waikato, Maniapoto so the focus at that time was then, to concentrate on the West Coast”.

449. Mr Lynch of the Ministry of Primary Industries also referred to the Ministry assisting “*Ngati Maniapoto and Waikato hapu*” to establish the Forum.⁵¹⁰ Under cross-examination he noted that:⁵¹¹

“Those were the two groups that were original parties to the establishment of the forum. I understand that Ngāti Hikairo might have some views about where they lie there, but to the best of my information, that was the case”.

450. When counsel asked whether the situation might be different today, the official was only prepared to say:⁵¹²

“I’d accept that Ngāti Hikairo is part of the forum and an effective part”.

451. It is submitted that the Ministry appears to have held a view that there was

⁵⁰⁶ Halley, #T7, p14, para 71

⁵⁰⁷ Transcript of Fifteenth Hearing, #4.1.20, p1759

⁵⁰⁸ Halley, #T7, p10, para 47

⁵⁰⁹ Transcript of Fifteenth Hearing, #4.1.20, p1758

⁵¹⁰ Lynch, #T6, p9, para 39

⁵¹¹ Transcript of Fifteenth Hearing, #4.1.20, p1773-4

⁵¹² Transcript of Fifteenth Hearing, #4.1.20, p1774

only “*Ngāti Maniapoto and Waikato hapu*” on the West Coast.

452. In relation to communication with tangata whenua, the Ministry of Primary Industries was clear that there are only “two platforms for engagement”: (1) the Trust Boards under the Waipā awa settlement legislation (Maniapoto Māori Trust Board and the Waikato Raupatu River Trust); and (2) those persons who attend the Ngā Hapū o Te Uru o Tainui Customary Fisheries Forum.⁵¹³ The Ministry was clear that the Forum was “*open to anyone to come and participate*”.⁵¹⁴ It is submitted that the Ministry’s position effectively requires Ngāti Hikairo to approach the Ministry through the Forum with any formal concerns about fisheries matters. There does not appear to be any clear aspiration for the Ministry to actively approach individual mana whenua in relation to fisheries. To be fair, a Ministry official did advise that he sought to attend a lot of hui and keep in touch,⁵¹⁵ but he admitted that the first port of call is actually through the “*Trust Boards or various iwi organisations*”.⁵¹⁶

5.12 Tuna fishery

453. In evidence Mr Thorne set out Ngāti Hikairo’s history of tuna culture and how the iwi no longer had access to many traditional tuna sites to continue that culture.⁵¹⁷ His evidence is that gravel extraction, discharges, pollution and commercial eeling in the 1950s, 60s, 70s, and 80s drastically reduced the numbers and sizes of eels in the fisheries:

*“Today our people believe that there are no tuna fisheries existent any longer in our traditional Waipā waterways, the tuna are gone, and so is our culture.”*⁵¹⁸

5.13 Conclusion

454. It is submitted that the evidence presented to the Tribunal in respect of the Kāwhia harbour, the Kāwhia lakes, the Ngāroto lake and other lakes, the

⁵¹³ Transcript of Fifteenth Hearing, #4.1.20, pp 1775-6

⁵¹⁴ Transcript of Fifteenth Hearing, #4.1.20, p1778

⁵¹⁵ Transcript of Fifteenth Hearing, #4.1.20, p1779

⁵¹⁶ Transcript of Fifteenth Hearing, #4.1.20, p1778

⁵¹⁷ Thorne, #N51, pp19-21

⁵¹⁸ Thorne, #N51, p21

Ōpārau and other rivers and other waterways within the rohe of Ngāti Hikairo shows that Ngāti Hikairo have suffered and continue to suffer numerous prejudicial effects as a consequence of the Crown's breaches of the Treaty and breaches of Te Rohe Pōtae Sacred Compact (Te Pitihana).

455. These include for Ngāti Hikairo:

- i. The physical and spiritual degradation of their tūpuna Kāwhia moana, Kāwhia lakes (including Paretao and Ōweka) and awa including te Ōpārau that flow into Kāwhia harbour and ngā puna wai Māori
- ii. The loss of their tino rangatiratanga and kaitiakitanga and access to the resources and rights to develop the resources
- iii. The reduction, to the point of near extinction, of their customary harbour and fresh water fisheries;
- iv. The loss of knowledge and understanding of their customs, tikanga, ture, kawa, reo Māori, traditions, whakapapa, role as kaitiaki,
- v. The loss and destruction, both wholly and partly, of their wāhi tapu;
- vi. The loss of tribal lands along, and including, the banks of the Ōpārau river and all the banks of rivers that flow into the Kāwhia harbour, and the foreshores of the Kāwhia lakes;
- vii. Their experience of anxiety, hurt, stress and trouble; and,
- viii. The gross offence to their customary right, title, mana, ihi and wehi.

6. Toitu te Iwi

6.1 Introduction

456. In this section we outline the evidence of the failure by the Crown and its agencies to recognise Ngāti Hikairo rangatiratanga within its rohe and the failure by the Crown to acknowledge Ngāti Hikairo's status as an iwi in its own right.

457. The evidence sets out several examples of this from the late 19th Century through to the present including the Crown's failure to uphold the agreements that protected iwi self-governance known collectively as Te Pitihana within Ngāti Hikairo, the struggle for acknowledgement and engagement with Crown and local government agencies since colonisation and the claimants' view of the Crown's Treaty settlement process.

6.2 Te Ōhākī Tapu /Te Pitihana

458. Ngāti Hikairo maintains that the Crown failed to uphold the agreement it made with Ngāti Hikairo, and the other four iwi, in the series of negotiations known to Ngāti Hikairo as Te Pitihana and also recognised as Te Ōhākī Tapu, or the Rohe Pōtae Pact or the King Country Pact.

459. The Kīngitanga, supported by many iwi, established an aukati to protect the lands under the Kīngi. From about 1867, Kāwhia Moana was included within the aukati.⁵¹⁹ The bulk, if not all, of the Ngāti Hikairo lands, remaining after the confiscation, was within the aukati and subject to its customary rules.⁵²⁰ In the 1870s and onwards, the Government was encouraging Ngāti Hikairo to take their lands outside the aukati boundary through the Native Land Court.⁵²¹

460. However by late 1883 Ngāti Hikairo had joined the iwi of Te Ōhākī Tapu and agreed to extend the external boundary of Te Rohe Pōtae to the north

⁵¹⁹ Marr, #A78, p67

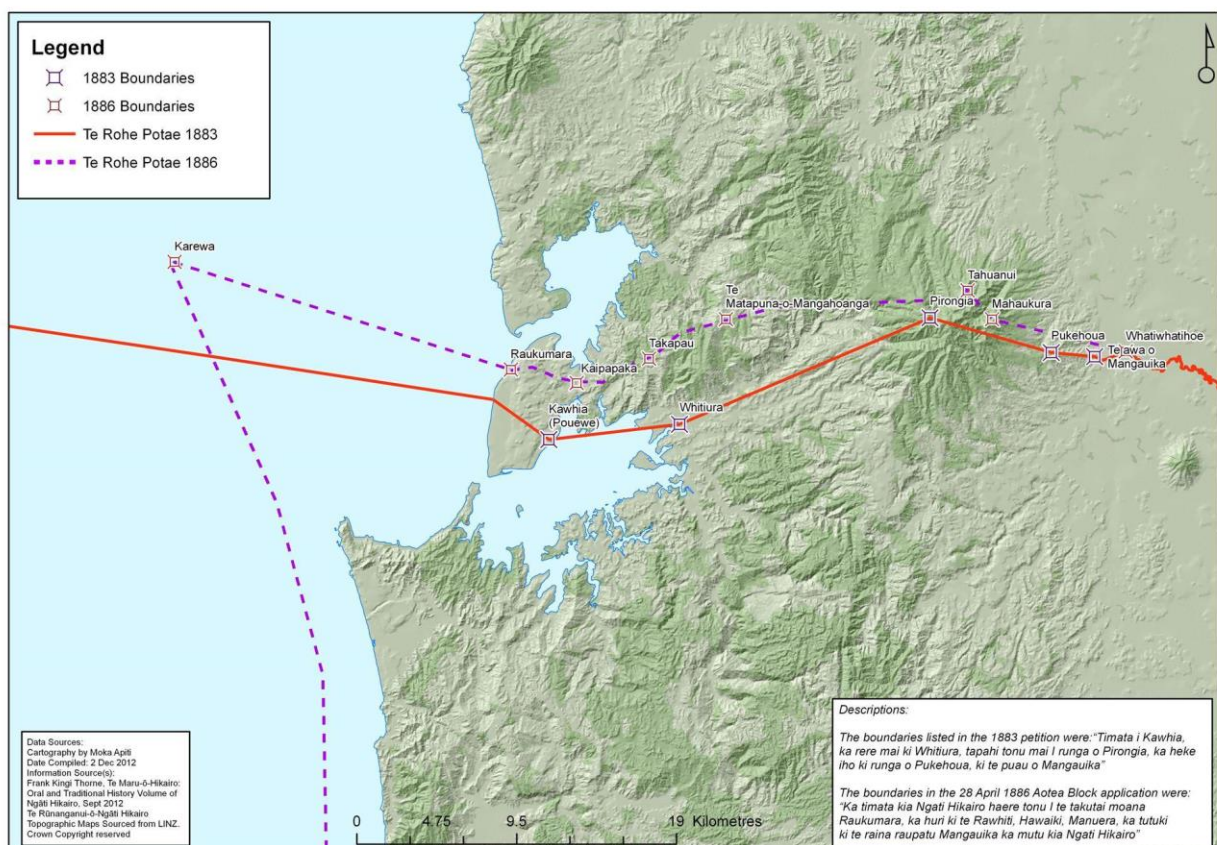
⁵²⁰ Marr, #A78, p68

⁵²¹ Marr, #A78, p315

to cover the iwi's key lands (outside the confiscation district).⁵²² In his evidence before the Tribunal Frank Thorne explained why Ngāti Hikairo called Te Ōhākī Tapu, Te Pitihana:

*"Ngāti Hikairo joined with Ngāti Tūwharetoa, Ngāti Raukawa, Whanganui and Ngāti Maniapoto as the fifth tribe of Te Rohe Pōtae in December 1883. This was after the June 1883 petition from those four tribes. That petition was seen as the core of what the Rohe Pōtae iwi sought from the Crown. For this reason many Ngāti Hikairo know the agreements of Te Rohe Pōtae at Te Pitihana – "The Petition".*⁵²³

461. Below is a Map showing the final agreed boundary line, which was adopted for the external survey and the later Native Land Court application in relation to the Aotea block. The Map shows the two boundaries.⁵²⁴



462. Ngāti Hikairo saw Te Pitihana and the later agreements made between the Crown and the five iwi as *"the protection of our self-governance and our*

⁵²² Marr, #A78, pp 873, 958 and Thorne, #I11, pp 13, 14

⁵²³ Thorne, # I11, p8

⁵²⁴ Thorne, # I11, p14

way of life".⁵²⁵

463. The Ngāti Hikairo view of Te Pitihana was set out in evidence from kōrero of Ngāti Hikairo rangatira Tita Wetere. He described Te Pitihana as follows:

"It gave the Government:-

- 1. The right to put the Main Trunk Railway through.*
- 2. The necessary land for the Railway including five to eight acres for stations and extra width for cuttings, etc.*
- 3. The opening of land under limitation of King Tāwhiao's veto for Pākehā settlement.*

On the other side it gave the Māoris:

- 1. Protection from taxation for the Railway and feeder roads.*
- 2. The permanency of their mineral rights.*
- 3. A solemn undertaking that no sale of intoxicants should ever be allowed in the King Country.*⁵²⁶

464. In 1884 the Crown sought to persuade Ngāti Hikairo to bring Native Land Court applications in relation to their lands from Kāwhia moana through to Pirongia maunga.⁵²⁷ Ngāti Hikairo however decided to work with the other iwi and bring a joint application. Ngāti Hikairo wanted to control their lands, not to sell them but to offer leases.⁵²⁸ This is evidenced in the speech of Pikia, when Jervois met with Ngāti Hikairo at Ōmiti in March 1884, where he said:

*"We do not want to sell our land, we want to lease it. Our boundary is ten miles beyond the shore, and if anything happened within that boundary we should consider ourselves responsible."*⁵²⁹

465. Ngāti Hikairo rangatira were parties to the 1886 Native Land Court application "Aotea ki Taupo ki Whanganui ki Paraninihi" that became the Aotea - Rohe Pōtae block. The finalised application included the Ngāti Hikairo lands in Kāwhia through to Pirongia (from the sea at Raukūmara to Rāwhiti, Hawaiki, Manuera, and to the confiscation line at Mangauika).⁵³⁰

466. By 1886 the Crown had failed to honour Te Ōhākī Tapu and allowed

⁵²⁵ Thorne, # I11, p25

⁵²⁶ Sarich, #A29, p186

⁵²⁷ Marr, #A78, pp 907, 939

⁵²⁸ Marr, #A78, pp 949-950, 1028

⁵²⁹ Marr, #A78, pp 949-950, 1028, see footnote 3385

⁵³⁰ Marr, #A78, pp 949-950, 958, 1268-9; Husbands & Mitchell, #A79, p35

further Native Land Court applications within the boundary of Te Rohe Pōtae.⁵³¹ Further, Ngāti Hikairo chiefs expected the Court would only assist with determining a boundary between Ngāti Hikairo and Ngāti Maniapoto rather than internal hapū boundaries.⁵³²

467. The Crown did support the establishment of the Kāwhia Committee which allowed more practical control of their lands by the iwi.⁵³³ And the iwi of Te Rohe Pōtae, including Ngāti Hikairo, wanted to adjudicate over their lands themselves and preferred their own “Kāwhia Native Committee” over the Native Land Court and believed that they could work collectively and have that authority recognised by the Crown.⁵³⁴

468. However the evidence is that the Kāwhia Native Committee had membership from the five tribes of Te Rohe Pōtae and worked well from 1884 but had begun to “fade out in about 1890”, coinciding with the key land alienations:

“The Kāwhia Native Committee was a forum for discussions on approaches to the negotiations and to Government. We believe that the Committee was the embodiment of the agreement and commitment of the five tribes to acknowledge one another as independent iwi and work collectively for the greater Rohe Pōtae mana motuhake and tino rangatiratanga.”⁵³⁵

469. In respect of control of alcohol, the evidence is that alcohol had a devastating effect on the people of Ngāti Hikairo, destroying the social make-up of the society, a reason behind people supporting land sales being the desire to obtain alcohol.⁵³⁶

“Our tribal kōrero is that the government wanted alcohol in Kāwhia as it promoted poor decision-making among our people and led to debts that would end up having to be paid in land. Alcohol split our people then as it does today.”⁵³⁷

470. Ngāti Hikairo supported prohibition through Te Pitihana and the subsequent agreements, but the key issue was Ngāti Hikairo having the

⁵³¹ Marr, #A78, pp 1291, 1295

⁵³² Berghan, #A60, p736-7

⁵³³ Marr, #A78, p1292

⁵³⁴ Boulton, #A67, p87 and Thorne, #I11, p25

⁵³⁵ Thorne, #I11, pp 20,21

⁵³⁶ Thorne, #I11 p21

⁵³⁷ Thorne, #I11 p24

ability to maintain control over the issue of alcohol and its distribution and effects not the Crown.⁵³⁸

6.3 Failure to recognise Ngāti Hikairo as an independent iwi

471. Ngāti Hikairo asserts it is an independent iwi and the claimants maintain that is up to Ngāti Hikairo what they call themselves. However Ngāti Hikairo is also aware that it is important to have a particular status with the Crown and more recently local authorities.

472. As given in evidence by Tom Moke in the context of the formation of the Tainui Māori Trust Board:

*"(...) what is most important is what we call ourselves and how we see ourselves. Of course it is not for the Crown to make us an iwi, that is our prerogative."*⁵³⁹

473. However counsel submits that the consequence of lack of recognition from the Crown is that Ngāti Hikairo is ignored and excluded as kaitiaki of its taonga and in particular its whenua. And Ngāti Hikairo maintains that the Crown has failed to recognise its status as an iwi and failed to protect tino rangatiratanga and mana motuhake, including the rights of Ngāti Hikairo as a tribe of Te Rohe Pōtae and Te Ōhākī Tapu.

474. The iwi has determined its own identity and membership in accordance with Ngāti Hikairo tikanga and traditions and continues to do so. The Native Land Court determination of 1886 is evidence of early Crown recognition of that status and the application made as a way of securing that recognition.⁵⁴⁰

475. Ngāti Hikairo has close whakapapa connections with Ngāti Maniapoto and with Waikato and continues to vigorously and consistently support the Kīngitanga. In evidence Mr Thorne said that: *"Ngati Hikairo traditions have always insisted that we have been promoting and supporting the Kingitanga right from its conception."*⁵⁴¹

⁵³⁸ Thorne, #111 p23

⁵³⁹ Moke, #N37, p10

⁵⁴⁰ Thorne, #A98(b) p16

⁵⁴¹ Thorne, #A98(b) p12

476. The Crown made an initial settlement of raupatu claims and passed the Waikato-Maniapoto Māori Claims Settlement Act 1946 which established the Tainui Māori Trust board for the benefit of “*all Māori Tribes in that district whose lands had been confiscated*”. The Crown agreed to make annual payments to the Board as part of the settlement.⁵⁴²
477. Ngāti Hikairo rangatira complained that the 1946 settlement of the confiscation losses of the tribes excluded Ngāti Hikairo.⁵⁴³ Ngāti Hikairo rangatira made a petition against the settlement as it had not sufficiently recognised the specific claims (particularly of the hapū Ngāti Puhiawe within the Ngāroto Parish).⁵⁴⁴ Further, at the heart of the 1946 opposition to the Settlement, was the fact there would be no land returned. A Ngāti Hikairo kaumātua, who was part of the board and an advisor to Kingi Koroki, vehemently opposed the deed, and coined the saying “*i riro whenua atu, me hoki whenua mai*”. Ngāti Hikairo were not included as a member of the Tainui Māori Trust Board initially.⁵⁴⁵
478. Ngāti Hikairo were included on the Tainui Māori Trust Board as part of the Hauauru region later as set out in Tom Moke's evidence:
- "At the Waipapa Poukai in 1952 Kīngitanga kaumātua sought agreement for Ngāti Hikairo to join the Trust. This "tono" was on behalf of Te Puea. She sought to ensure Kingitanga and Tainui unity."*⁵⁴⁶
479. While this meant the iwi was recognised as recipients of the confiscation settlement and sat well with the iwi's support of the Kīngitanga, it nevertheless undermined Ngāti Hikairo to some degree as the iwi was grouped within tribal districts of a Waikato iwi Board. This is ironic given that there were strong contests between Ngāti Hikairo, Ngāti Maniapoto, and Waikato before the Native Land Court in relation to tribal boundaries at Kāwhia and other places.⁵⁴⁷

⁵⁴² Sarich, #A29, p258

⁵⁴³ Sarich, #A29, p271

⁵⁴⁴ Sarich, #A29, p276

⁵⁴⁵ See for example Seymour, #N46, p2

⁵⁴⁶ Moke, #N37, p11

⁵⁴⁷ see for example Ōtorohanga MB 3, pp.41-52

480. However Tom Moke in his evidence said that the Tainui Māori Trust Board recognised four main confederations rather than only four iwi:

"Within those confederations there existed and still exists Iwi groupings. For example, Ngāti Maniapoto grouping includes Rereahu. The grouping of iwi under the banner of "Waikato" includes:

- (i) Ngāti Korokī iwi;*
- (ii) Ngāti Hauā iwi;*
- (iii) Ngāti Mahuta iwi; and*
- (iv) Ngāti Hikairo iwi.*

*At that time, and in the years to 1952 Ngāti Hikairo were always seen as an iwi.*⁵⁴⁸

481. Since the 1946 settlement, the Crown has recognised Ngāti Hikairo as a hapū within more than one iwi and Treaty settlement process.⁵⁴⁹ It is Mr Moke's evidence that while the legislation for the Tainui Māori Trust Board referred to the 32 members of the confederation as hapū, *"it was acknowledged for example that Ngāti Haua, Ngāti Hikairo were iwi in their own right"*.⁵⁵⁰

482. Mr Moke also sets out in his evidence that during his tenure with Tainui Māori Trust Board and his involvement in the 1990's Tainui Raupatu and establishment of the post settlement governance entity, the primary focus was recognition of Waikato unity:

*"Robert Mahuta made the comment when asked by Ngāti Haua kaumātua to clarify their Iwi v Hapū concerns. "What the statutes may say is one thing, what we know is quite another." I submit this is the same for Ngāti Hikairo".*⁵⁵¹

483. In counsel's submission the Crown has not understood this perspective and, in counsel's submission, this contrasts with Ngāti Hikairo being clearly perceived as one of the iwi of Te Ōhākī Tapu by the Crown at that time.

6.4 Relationship with Government Departments

484. The evidence of Ngāti Hikairo to this Tribunal is that the Department of Conservation has little or no relationship with Ngāti Hikairo. The iwi note

⁵⁴⁸ Moke, #N37, p11

⁵⁴⁹ The 1946 and 1995 Raupatu Settlements, the Terms of Negotiation between the Crown and Ngāti Maniapoto, dated 4 September 2008 and the 2010 Waikato Awa settlements have subsumed Ngāti Hikairo under Waikato and Ngāti Maniapoto

⁵⁵⁰ Moke, #N37, p13

⁵⁵¹ Moke, #N37, p13

that there is no accord or other agreement with the Department.⁵⁵² Under cross-examination the Department noted that it was not then looking to any agreement with Ngāti Hikairo.⁵⁵³ Also, the Crown evidence on the Department of Conservation mentions no relationship with Ngāti Hikairo.⁵⁵⁴ In cross-examination Counsel asked a Department of Conservation official if it was sad that after around 25 years of Department of Conservation activities Ngāti Hikairo leadership were complaining of poor consultation by the Department. The Department official recognised that it was a “*sad state of affairs*”.⁵⁵⁵

485. An example of the lack of relationship of the Department arose in the evidence of Mr Thorne who stated that Ngāti Hikairo submitted comments in relation to the Department of Conservation’s Waikato Conservation Management Strategy and after two years the iwi was told the submission would not be accepted. Ngāti Hikairo understood that the Department was only recognising Waikato in that process because they were recognised in a Treaty settlement.⁵⁵⁶ Counsel put this allegation to a Department of Conservation official who simply responded that the settlements play a role in focussing the Department’s attention and resources on the settlement group.⁵⁵⁷

6.4.1 Pirongia Mountain Forest Park - DoC

486. Ngāti Hikairo understands that its traditional association and connection with Pirongia includes that the iwi controls the forested slopes of Pirongia and its waters that flow in to the Waipā.⁵⁵⁸

487. Mr Thorne set out that despite the Native Land Court awarding Ngāti Hikairo interests title to blocks that are part of Pirongia and despite the agreements of Te Pitihana (Te Ōhākī Tapu/), that a large percentage of

⁵⁵² Thorne, #N51, p25

⁵⁵³ Transcript hearing week 14, 2014, #4.1.20, p1475

⁵⁵⁴ See Birch #T1;

⁵⁵⁵ Transcript hearing week 14, 2014, #4.1.20, p1482

⁵⁵⁶ Thorne, #N51, p25

⁵⁵⁷ Transcript hearing week 14, 2014, #4.1.20, p1478

⁵⁵⁸ Thorne, #N51, p8

the actual Pirongia Mountain now part of the Forest park.⁵⁵⁹

488. Further despite the Crown having acknowledged the iwi as one of five tribes of Te Rohe Pōtae, *“Ngāti Hikairo is continually denied acknowledgement, recognition, and consultation as tangata whenua on Pirongia Maunga”*.⁵⁶⁰

489. He said that the Pirongia maunga land had been alienated from Ngāti Hikairo by raupatu and dubious Crown purchases.⁵⁶¹ He said:

*“As a consequence of this aggressive purchasing and raupatu, Ngāti Hikairo consider ourselves now devoid of any legal rights to be kaitiaki, and tangata whenua of Pirongia. Ngāti Hikairo is forced to sit by and watch as Crown agencies and Crown Recognised Iwi Authorities, make decisions over, manage, and utilise our maunga tapu.”*⁵⁶²

490. His evidence sets out the efforts to have the Crown and through its agency the Department of Conservation acknowledge the iwi’s role as kaitiaki and the Department’s continuing stance of ignoring those efforts.

491. Mr Thorne gave a number of examples where Ngāti Hikairo was ignored or poorly treated by the Department of Conservation in relation to the management of Pirongia maunga.⁵⁶³ In particular, one concrete example of that is the construction of tracks for Te Araroa (the great New Zealand walkway), being opened on the maunga without any consultation with Ngāti Hikairo.⁵⁶⁴

492. The Crown’s evidence on the Department’s management of Pirongia maunga accepted that Ngāti Hikairo was not even approached in relation to a walkway on the maunga that was opened in 2011.⁵⁶⁵

⁵⁵⁹ Thorne, #N51, p23

⁵⁶⁰ Thorne, #N51, p23

⁵⁶¹ Thorne, #N51, p23

⁵⁶² Thorne, #N51, p25; Thorne, #N51(a)

⁵⁶³ Thorne, #N51, p25

⁵⁶⁴ Thorne, #N51, p27

⁵⁶⁵ Birch #T1, p14; and see Transcript hearing week 14, 2014, #4.1.20, p1483

6.4.2 Ministry for Primary Industries

493. In the case of the Ministry for Primary Industries, the key points of consultation are either through the Regional Forum (upon which Ngāti Hikairo has representation) or through the co-governance entities arising out of the Waikato River settlement legislation. In cross-examination Counsel asked whether the Ministry had direct consultation with Ngāti Hikairo and the Ministry officials were of the view that the Forum provided a platform for consultation,⁵⁶⁶ Interestingly, the Ministry did accept that the:

*“first port of call is actually through the Trust Boards or various iwi organisations. From there we are hoping that that information is then put out to the hapū and maraes that belong to that organisation”*⁵⁶⁷

494. Counsel note that the evidence from the officials of the Ministry for Primary Industries only refers to “Ngāti Maniapoto and Waikato hapu” representatives on the Regional Forum.⁵⁶⁸ It is submitted, that this evidence suggests that the Ministry is effectively seeking to consult at a high level and that in reality it views Waikato and Ngāti Maniapoto as the key parties.

495. A further example of this lack of acknowledgement from the Crown is the Taonga Tūturu Portfolio Accord between the Ministry for Culture and Ngāti Maniapoto Trust Board, under development but not yet finalised. Under cross-examination by counsel Ralph Johnson on this matter, Mr Johnson agreed that the relationship might extend beyond the Accord Area.⁵⁶⁹ He also agreed that any Taonga Tūturu found within the Accord area could be held by Ngāti Maniapoto until ownership of the taonga was determined.⁵⁷⁰

496. Mr Johnson also detailed the, in our submission, very cumbersome and costly requirements on both the Crown and parties objecting where

⁵⁶⁶ Transcript hearing week 14, 2014, #4.1.20, pp 1776-8

⁵⁶⁷ Transcript hearing week 14, 2014, #4.1.20, pp 1778

⁵⁶⁸ Lynch, #T6, p9; Halley, #T7, p10. Under cross-examination an official did accept that Ngāti Hikairo has membership on the Forum, Transcript hearing week 14, 2014, #4.1.20, pp 1758-9,

⁵⁶⁹ Johnson, Wai 898, #T8(d) p1

⁵⁷⁰ Johnson, Wai 898, #T8(d) p1

Taonga Tūturu are found and ownership might be disputed.⁵⁷¹

497. Counsel submits that this Accord puts the mana of Ngāti Hikairo as an iwi in jeopardy. This is due to the statutory recognition by the Crown of the Ngāti Maniapoto Trust Board (with a degree of exclusive Crown relationships in the Waipā area) and the inclusion of Ngāti Hikairo as a hapū under the settlement.

6.5 Relationship with Local Government

498. Further evidence of how this stance of the Crown has impacted negatively on the position of Ngāti Hikairo was given by Mr Tony Spelman in relation to local government. He emphasised various examples of this "*deliberate oversight*"⁵⁷² in operation in his evidence. Dr Roma Mere Roberts in her evidence also highlighted the fact that "it is Councils who make the decision as to whom to consult and that this is of ad hoc and subjective."⁵⁷³

499. Te Rūnanganui o Ngāti Hikairo has been a registered iwi authority since 1995 and in that time has attempted to engage with both central and local government to gain acknowledgement of its status and to gain recognition of its mana whenua and kaitiaki role. The vision Te Rūnanganui o Ngāti Hikairo was set out the evidence of Mr Spelman envisaging a time when Ngāti Hikairo can again practice tino rangatiratanga.⁵⁷⁴

6.5.1 Relationship with Environment Waikato regarding Kāwhia Moana

500. Ngāti Hikairo has been in communication with Environment Waikato since 2005 in relation to the management of Kāwhia Harbour and the iwi concerns about the quality of the existing management of the harbour. The iwi desire has been to develop a shared vision (in the interests of tangata whenua and general community) for the health and well being of harbour and its environs that acknowledges Ngāti Hikairo tangata whenua

⁵⁷¹ Johnson, Wai 898, #T8(d) p2, 3

⁵⁷² Spelman, #N18, p2

⁵⁷³ Roberts, #N47, para 19

⁵⁷⁴ Spelman, #N18, pp 4-5

and involves it in decision making.⁵⁷⁵

501. In the view of Ngāti Hikairo the erosion of recognition of Ngāti Hikairo's status as tangata whenua or even the lack of acknowledgement at all affects the iwi's meaningful participation. In the evidence Mr Spelman also identifies incompatible district plans, poor communication between the various district councils and the regional councils and the conflicting views on where jurisdiction lies as additional issues for the iwi.

502. Ngāti Hikairo's proactive approach to management of the harbours with a tikanga Māori framework has been rebuffed and Environment Waikato operates by imposing its views and practices on the iwi rather than working together and advising Ngāti Hikairo that its interests will be relegated.

6.5.2 Relationship with Ōtorohanga District Council

503. With this example Ngāti Hikairo attempted to develop a mutually beneficial relationship with this Council. The evidence presented showed a history where there had been no formal acknowledgement by the Council of Ngāti Hikairo's mana whenua status and interests in the area.⁵⁷⁶

504. Again after approaches by Ngāti Hikairo over time, certain agreements and acknowledgements of Ngāti Hikairo and its status have been entered into with this Council.

505. However as Mr Spelman noted, the maintenance of these relationships is dependent on supportive individuals within Council having energy for the engagement and on the voluntary resources of the iwi:

"Work on the wider relationship development work relating to resource management or Tiriti/Treaty relationship development has halted due in part to the departure of the Council's key manager in this area but also due to the competing demands of this current claims process and the ambitious

⁵⁷⁵ Spelman, #N18, p13

⁵⁷⁶ Spelman, #N18, p23

*scope of our aspirations in this area, work on which is completely voluntary and unresourced".*⁵⁷⁷

506. This issue was mentioned also in Dr Roberts' evidence:

*"As mentioned above under (her paragraph 18) the Local Government Act 2002 sidesteps any obligations under the Treaty of Waitangi, leaving them to the Crown and simply undertaking to "facilitate participation by Māori in local authority decision-making processes". Unfortunately however, Councils seldom employ staff with the skills to undertake that facilitation; or with knowledge of local iwi and their relationships. As a result they find it easier to deal with Trust Boards or Runanga whose representative may not have the mandate or the knowledge of the specific case in question to act in the interests of mana whenua."*⁵⁷⁸

6.5.3 Waipā District Council

507. The issue highlighted by this particular example was that Ngāti Hikairo withdrew from a group of several iwi with connections to the Council district: "Ngā Iwi Tōpu o Waipā" a group with Council chose to engage with rather than with each iwi separately.⁵⁷⁹

508. The iwi's desire to engage directly where its interests are concerned has not been taken up by Council despite many letters, submissions and suggesting ways the iwi and Council could work together in a way that recognised Ngāti Hikairo's status.

509. In counsel's submission this struggle by mana whenua to engage meaningfully with Crown and local authorities, where local authorities continue to decide and dictate the rules of engagement is contrary to and a breach of Te Tiriti.

6.6 Iwi Classification - Statistics New Zealand

510. As an example of central government failure to recognise Ngāti Hikairo as an iwi, the claimants gave evidence of the Crown's failure to recognise Ngāti Hikairo as an iwi for the iwi classification section in the national census.

⁵⁷⁷ Spelman, #N18, pp26, 27

⁵⁷⁸ Roberts, #N47, para 21

⁵⁷⁹ Spelman, #N18, p27

511. In the census, citizens of Māori descent are asked to identify the iwi to whom they whakapapa under the Iwi classification section.⁵⁸⁰
512. In evidence Mr Spelman advised that in 2009, Statistics New Zealand (SNZ) declined Ngāti Hikairo's application for inclusion as a separate iwi classification after a lengthy submission and investigation process.⁵⁸¹ SNZ admitted that Ngāti Hikairo did meet certain of their criteria but one reason stated for declining the application was opposition from Ngāti Maniapoto Trust Board and Waikato Raupatu Trustee Company Limited. However those entities' reasons for opposing the claimants' inclusion were not supplied by SNZ and in subsequent Official Information requests in respect of the application, that specific information was withheld.⁵⁸²
513. Further SNZ's response did not disclose whose expertise they had used to come to this decision but SNZ did acknowledge that such matters were better decided by iwi and hapu not Government departments.⁵⁸³
514. The claimants assert that SNZ's criteria for iwi classification are unclear and subjective, appear to have been unilaterally developed and to be unilaterally subject to change. Statistics New Zealand has advised that it had established a review process⁵⁸⁴ but to date, the evidence shows, the claimants have had no approach to participate or make submissions to any such review. Further Ngāti Hikairo is still waiting for the Office of the Ombudsmen to respond to its complaint regarding the withholding of information.⁵⁸⁵
515. An effect of the failure to properly provide for Ngāti Hikairo iwi classification in the census is that Ngāti Hikairo census respondents are likely to be included under the statistics for another iwi. ⁵⁸⁶
516. Counsel recognize that the Office of the Ombudsmen represents a

⁵⁸⁰ Pursuant to Section 4 of the Statistics Act 1975.

⁵⁸¹ Spelman, #N18, p6

⁵⁸² Spelman, #N18, p8

⁵⁸³ Spelman, #N18, p10

⁵⁸⁴ Spelman, #N18, p12

⁵⁸⁵ Spelman, #N18, p11

⁵⁸⁶ Robinson, #A88(d), p2

particular avenue for potential relief in this matter, but nevertheless continue to seek findings and recommendations from this Tribunal on this aspect of the claims in terms of the principles of the Treaty of Waitangi. Of course, it is not the function of the Ombudsmen to make such Treaty findings.

6.7 Flawed Treaty Settlement Process

517. Ngāti Hikairo maintains that the Crown's Treaty Settlement process is flawed and ineffective in relation to Ngāti Hikairo. It has disempowered Ngāti Hikairo and is in itself a breach of Te Tiriti o Waitangi in that the operation of Ngāti Hikairo tikanga is constrained and subservient to Crown rules, law, and settlement policy.

518. Ngāti Hikairo's need to comply with the Crown rules and law in order to get a hearing before the Crown and a settlement regarding its Treaty claims is a breach of Te Tiriti o Waitangi and the relationships between its partners. Mr Spelman in evidence said in relation to the Tribunal hearings process:

*"There has been no provision for us to decide process, timing, policy and practice relating to our claims. Our views are sought in relation to Crown policy and practice but there is no provision or the inclusion and operation of Ngāti Hikairo processes and decision making on these matters. The impact of this is to constrain our ability to practice tino rangatiratanga in a practical way and the compromise continues our subservience in the long history of colonisation."*⁵⁸⁷

519. For these reasons, counsel submits, the Crown's Treaty settlement process can never assist the iwi to reach the position that the iwi seeks. This is because the Crown dictates the parameters and process relating to the negotiations and outcomes.

520. This renders Ngāti Hikairo tikanga irrelevant in the context of law and minimises the effectiveness of Ngāti Hikairo participation in the everyday operation of the business of government as evidenced in the highlighted case studies above.

521. As a consequence of the flaws in the process, Ngāti Hikairo considers that

⁵⁸⁷ Spelman, #N18, p3

at best the iwi can look forward to some mitigation of the effects of colonisation rather than aspire to re-establish their true mana motuhake and tino rangatiratanga. In evidence it was said that:

*"The ongoing accommodation of "Tangata Whenua values" within practice that is dominated by Crown values is unacceptable to us and undignified for the Crown as a signatory to Te Tiriti o Waitangi."*⁵⁸⁸

522. Ngāti Hikairo has experienced the impacts of previous Treaty settlements in 1946, 1995, and 2010 where the iwi has been recognised a hapū of its neighbouring iwi. Accordingly, Ngāti Hikairo has struggled to assert its tribal identity and the identity of its various hapū. The Treaty of Waitangi settlements in relation to Waikato have fed into longstanding and strong disputes over interests in Kāwhia.⁵⁸⁹

523. A case example in point arose following the Treaty settlements in relation to the Waipā awa which Ngāti Hikairo have submitted ignores them as kaitiaki. The evidence was that this was because those settlements have focused on Waikato and upon Ngāti Maniapoto to the exclusion of Ngāti Hikairo (except insofar as Ngāti Hikairo is recognised as a hapū of both those groups). Mr Thorne stated:

*"Then the Waikato River Settlement seems to have cemented Waikato-Tainui as the authority over the Waipā River to north of the Pūniu, and the Waipā River Settlement, determined Ngāti Maniapoto as the authority south of the Pūniu River. Ngāti Hikairo considers it has been completely left out of this process".*⁵⁹⁰

524. It is submitted that the Treaty settlements have tended to focus the Crown relationship on particular parties to the exclusion of others and has led to Crown departments looking to groups such as Waikato-Tainui in relation to management of Ngāti Hikairo whenua. For example, under cross-examination a Department of Conservation official responded to a question relating to the Department's focus on Waikato-Tainui rather than Ngāti Hikairo by stating *"And that's where settlements have a role to play in terms of focussing those resources and focussing our attention"*.⁵⁹¹

⁵⁸⁸ Spelman, #N18, p34

⁵⁸⁹ see for example Ōtorohanga MB 3, pp.41-52

⁵⁹⁰ Thorne, #N51, p15

⁵⁹¹ Transcript hearing week 14, 2014, #4.1.20, p1478

525. Ngāti Hikairo seeks constitutional reform of the Crown position on the issue of sovereignty to include, not subjugate, Ngāti Hikairo in governance arrangements (philosophy, systems and processes and decision making) consistent with a practical recognition of Ngāti Hikairo tikanga and rangatiratanga. That change is required by the claimants:

*"The restoration of the mana of Hikairo tikanga, seen as law that sits alongside, not under, Crown law, is an important fundamental change that needs to occur. This will require movement in the Crown's concept of sovereignty from one that is absolute and monocultural to one that is relational and shared between the two partners to Te Tiriti."*⁵⁹²

6.8 United Nations Declaration on the Rights of Indigenous Peoples

526. The claimants say the Crown by its conduct has breached the fundamental rights of indigenous peoples to determine their own identity or membership are set out in the following articles United Nations Declaration on the Rights of Indigenous Peoples, a declaration that the Crown supports:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

527. It is submitted that the United Nations Declaration on the Rights of Indigenous Peoples is relevant to the Waitangi Tribunal's jurisdiction. The Declaration was supported by the New Zealand Government in April 2010. As an instrument of international law it is submitted that the Tribunal should take it into account when making its recommendations and findings under the Treaty of Waitangi Act 1975.

⁵⁹² Spelman, #N18, p33

528. The evidence has set out how lack of recognition from the Crown of Ngāti Hikairo status affects the claimants in a very practical way and prevents them from asserting their rights in many other ways. In the case of SNZ:

*"(...)we are still left in the situation that we are not recognised in the Census and therefore in the Crown's eyes as an independent iwi. As we say in our statement of claim, this is at odds with the fundamental rights as set out in the United Nations Declaration on the Rights of Indigenous Peoples and the rights of indigenous peoples to determine their own identity or membership. It is fundamental that the Crown re-recognise us as an iwi."*⁵⁹³

6.9 Conclusion

529. The evidence submitted by Ngāti Hikairo has shown the lack of regard by the Crown for the Treaty partnership model envisaged in Te Tiriti in particular in relation to Ngāti Hikairo.

530. The evidence before this Tribunal is that Ngāti Hikairo joined Te Pitihana in December 1883 on the basis that the boundary was extended to the north to incorporate the iwi's key lands. From that point onwards, Ngāti Hikairo was a formal member and was the fifth tribe in those agreements. It is submitted that the Crown has failed to maintain its commitment to Te Pitihana and the agreements reached between the Crown and the five iwi of Te Rohe Pōtae including Ngāti Hikairo, that guaranteed Ngāti Hikairo self governance and tino rangatiratanga.

531. It is further submitted that the Crown's failure to acknowledge Ngāti Hikairo as an iwi by the Crown has marginalised the claimants as evidenced by the total lack of inclusion and operation of Ngāti Hikairo process and decision making and the imposition of the Crown view at a central government and local government level.

⁵⁹³ Spelman, #N18, p12

7. Conclusion

532. Traversing the evidence and claims of Ngāti Hikairo it is obviously apparent that the iwi have suffered in so many ways due to Crown Treaty breaches. Over the last 190 years the iwi have accordingly faced a wide and complex set of issues. It is submitted that this must have made it particularly difficult for the iwi and the Rangatira to adjust and to find adequate responses and solutions. The web was contorted, stretched and broken in many places.
533. In the 1820s Ngāti Hikairo were among the first Māori of this region to interact with Pākehā and incorporate them into their community. These initial interactions were controlled by the Rangatira of Ngāti Hikairo and subject to local authority. The relationship with Pākehā traders and missionaries was fruitful and as the trade grew, Ngāti Hikairo experienced a period of prosperity – owning mills and ships and trading to distant places. There were of course some negative aspects of this connection, such as the growing use of alcohol and tobacco.
534. Through the first decade or so after the signing of the Treaty, Māori experienced more of the problems associated with the new arrivals. The evidence has been that Ngāti Hikairo, and particularly the iwi tohunga, played a pivotal role in the creation of the Kīngitanga - an authority to respond to the Crown. The Tribunal will have seen that despite the pressure applied by the Crown and settlers, Ngāti Hikairo has remained steadfast to the Kīngitanga.
535. The first real turning point was probably when the Crown invaded Taranaki and Waikato. The breach of the aukati caused a series of wars in which Māori suffered widely while defending their property and whānau. The Crown invaded to break down the authority of the Kīngitanga and to open up the lands for settlement. It was a time of upheaval and, it is submitted, Ngāti Hikairo was subjected to particular pressure having been at the centre of Pākehā/Māori relationships at Kāwhia. The impact was that

following the wars the iwi was described by some as “loyal” while the people were listed as an iwi in “rebellion” by the Crown.

536. The confiscation of Ngāti Hikairo land is vital context to the iwi claims as it effectively cut the rohe in two and consigned the people towards the western slopes of Pirongia and Kāwhia moana.

537. Following the confiscation the various iwi of te Rohe Pōtae re-gathered to the south of the Pūniu, behind an aukati established by the Kīngitanga. In Kāwhia many of the settler Pākehā were evicted by Ngāti Hikairo. The Crown was circling around the boundaries of the aukati applying pressure through purchase transactions and Native Land Court investigations. When certain iwi Rangatira of Ngāti Maniapoto, Ngāti Tūwharetoa, Ngāti Raukawa and Whanganui gathered to affirm Te Rohe Pōtae through the early 1880s, Ngāti Hikairo was standing to the side and considering its position and how it would balance its relationships with its neighbours and with its commercial aspirations with its Pākehā at Kāwhia. The iwi was considering a Native Land Court application itself to determine its external boundaries.

538. It is submitted that the Crown’s next step effectively forced Ngāti Hikairo’s hand. The Crown, keen to gain a foothold within the aukati and within the strategically important Kāwhia harbour, asserted a right to land at Pouewe in Kāwhia and entered to the harbour to place beacons in the waters and to survey out a township there. The evidence was that Ngāti Hikairo were affronted by this interference with their rangatiratanga, but in a difficult position knowing the power of the Crown’s military forces while wanting to preserve their own tribal authority and the position of the Kīngitanga.

539. It is submitted that the Crown’s decision to enter into Pouewe was a strong factor that led Ngāti Hikairo to join the tribes of Te Rohe Pōtae and become the “fifth tribe”. It is submitted that this was following the submission of the 1883 petition to Parliament by those tribes and that is why Ngāti Hikairo know the agreements as “Te Pitihana”. Upon joining as the fifth tribe the boundary of Te Rohe Pōtae was extended to the north to

cover the Ngāti Hikairo lands. It is submitted that at this time the Crown was dealing with Ngāti Hikairo as an iwi of Te Pitihana.

540. Te Pitihana for Ngāti Hikairo reflects a strong assertion of their tribal authority within their rohe. It was a natural response, along with the Kīngitanga, to the pressures applied by the Crown. Unfortunately, the historical record shows that the Crown worked to undermine the tribal authority and the recognition of Ngāti Hikairo as an iwi of Te Rohe Pōtae

541. The five tribes agreed to allow the Native Land Court to determine the external boundaries of Te Rohe Pōtae – The Aotea Block, but the Court went further to start defining internal blocks and ownership lists. Immediately the Crown began a rapid and determined purchasing programme. Between 1895 and 1910 a further half of Ngāti Hikairo's rohe was alienated in the context of a Crown purchase monopoly. The iwi landholdings were now around half of their initial size and concentrated around Kāwhia (as the Crown Purchases were predominantly within the Pirongia West and Mangauika blocks).

542. Since the time of Te Pitihana, the Crown has tended to focus on the larger neighbours of Ngāti Hikairo to the point that today the iwi consider that they are only dealt with in relation to their whenua as a hapū of their larger neighbouring iwi. This is not the true position and is disputed by Ngāti Hikairo.

543. The three key themes that arise in the claims before this Tribunal are:

543.1. The iwi has suffered from extensive land loss. The losses occurred first in the east of the iwi rohe. The eastern half of the rohe was lost to confiscation. A further half was alienated in the eastern areas of the Pirongia maunga. Half of the total rohe of the iwi was lost by 1910.

543.2. A further key theme is the Crown's promotion of assimilation and colonisation. Witnesses told the Tribunal how Ngāti Hikairo have been well known as tohunga from the time of the Tainui

waka though to the formation of the Kīngitanga and beyond, but that the knowledge base of the iwi has been interfered with and interrupted by colonisation and assimilation promoted by the Crown.

543.3. The final key and recurring theme is that the Crown has failed to sustain a Treaty relationship with Ngāti Hikairo. The iwi evidence before this Tribunal is that the iwi feels marginalised and ignored in their own rohe.

544. The Wai 1112 and Wai 1113 contain broad requests for relief and recommendations. In addition at this juncture, counsel ask that the Tribunal recommend:

544.1. That the claims of Ngāti Hikairo are “well-founded”; and,

544.2. That the Crown should deal with Ngāti Hikairo directly to discuss how the relationship with the iwi might be restored.

DATED at Auckland this 22nd day of October 2014



Dominic Wilson / Bernadette Arapere / Robyn Gray

Counsel for the Wai 1439, Wai 2351, Wai 2353, Wai 1112, and Wai 1113 Claimants