

IN THE WAITANGI TRIBUNAL

WAI 1040
WAI 1679

IN THE MATTER of

the Treaty of Waitangi Act
1975

AND

IN THE MATTER of

Te Paparahi o Te Raki
Inquiry

AND

IN THE MATTER OF

of a claim brought by
Wayne Graham Stokes
and Maurice Edward
Penney for and on behalf of
themselves and the people
of Te Urikapana and Ngare
Hauata hapū, the
beneficiaries of the Kiwikiwi
Whanau Charitable Trust
and Remana and Arihi
Kiwikiwi Whanau Trust

**CLAIMANT CLOSING SUBMISSIONS
FOR NGARE HAUATA AND TE URI KAPANA**

Dated this 16th day of August 2018

Counsel Acting:
Moana Tuwhare
PO Box 177
Kerikeri
Northland
(09) 407 9534
moana@tuwhare.co.nz

1.0	Introduction.....	4
2.0	The Claimants	5
3.0	Ngare Hauata and Te Urikapana hapū.....	5
4.0	Duties of the Crown.....	7
5.0	The Claims / Summary of Key Issues	7
6.0	Te Ngare Hauata and Te Urikapana Rohe	9
7.0	The Claimant Evidence	9
8.0	Te Paparahi o Te Raki Stage 1.....	10
9.0	Issue 1: TINO RANGATIRATANGA, KĀWANATANGA AND AUTONOMY: POLITICAL ENGAGEMENT BETWEEN MĀORI AND THE CROWN	10
	Generic Claimant Closing Submissions and Reply Submissions.....	10
	Summary of Key Points	11
	Facts and Evidence Relied On.....	11
	1860 Kohimarama Conference	15
	Submissions in Reply to the Crown Position	18
10.0	Issue 2: OLD LAND CLAIMS, SCRIP AND SURPLUS LANDS	25
	Generic Claimant Closing Submissions and Reply Submissions.....	25
	Old Land Claims within Ngare Hauata and Te Uri Kapana Rohe.....	30
	Facts and Evidence Relied On.....	31
	Summary of the William Williams’ Claims	40
	Analysis of the Henry & William Williams Old Land Claims	40
	A Conditional Agreement: Sharing the Land	41
	Exclusion of the Wahi Tapu: OLC 523	43
	Surveying & Crown Title.....	46
	The Reserves	48
11.0	Issue 3: THE NORTHERN WAR, 1844–1846	51
	Generic Claimant Closing Submissions.....	51
	Summary of Key Points	52
	Facts and Evidence Relied On.....	53
	Attack on Te Haratua	54

Economic Effects of the War	55
Applicable Principles of Te Tiriti	56
12.0 Issue 5: THE NATIVE LAND COURT, 1865–1900.....	57
13.0 Issue 7: TWENTIETH CENTURY ALIENATION, RETENTION, TITLING AND ADMINISTRATION OF MĀORI LAND	62
14.0 Issue 8: PUBLIC WORKS AND OTHER TAKINGS	67
15.0 Issue 10: OWNERSHIP AND MANAGEMENT OF ENVIRONMENTAL, WATER AND OTHER NON-LAND RESOURCES.....	68
16.0 Issue 11: TAKUTAI MOANA/FORESHORE AND SEABED	69
17.0 Issue 12: SOCIO-ECONOMIC ISSUES.....	69
18.0 Issue 14: TE REO MĀORI, WĀHI TAPU, TAONGA AND TIKANGA.....	70
19.0 General Prejudice Caused.....	70
20.0 Findings and Recommendations Sought.....	71
21.0 Concluding Statement	73

MAY IT PLEASE THE TRIBUNAL

1.0 Introduction

- 1.1 These are the closing reply submissions for Wai 1679. Wai 1679 (the claim) was lodged by Wayne Stokes and Maurice Penney on behalf of Ngare Hauata and Te Urikapana hapū, and the Kiwikiwi whanau and Remana and Arihi Kiwikiwi Whanau Charitable Trusts.¹
- 1.2 The usurpation of Mana Maori, sovereignty, left in place pursuant to article two of Te Tiriti, is the original and fundamental breach of Te Tiriti. It is in this context that the claimants have presented their claim before the Tribunal throughout the Stage 2 hearing.
- 1.3 A significant part of the Ngare Hauata and Te Uri Kapana story has been told before this Tribunal. This is the story of these hapū of Taiamai and Pewhairangi post the signing by their rangatira of He Whakaputanga me Te Tiriti. This story in Counsels submission is one of an abject failure of the Crown to protect Ngare Hauata and Te Uri Kapana or recognise and uphold their tino rangatiratanga.
- 1.4 Ngare Hauata and Te Uri Kapana rangatira have a long history of political astuteness in the Taiamai and Pewhairangi area. The rangatira actively engaged with the early settlers. In particular, the Williams' whanau were encouraged to settle amongst them. They thus embraced the new world ultimately facilitating under Crown pressure the alienation from their people of thousands of acres of hapū lands in Taiamai and its surrounds.
- 1.5 The onus was on the Crown to protect Ngare Hauata and Te Uri Kapana and others from the inevitable result of alienating most of their land from them, and the inevitable result of actively undermining the rangatiratanga of the hapū.
- 1.6 Throughout this period, Crown agents demonstrated little concern to ensure Ngare Hauata and Te Uri Kapana retained a sufficient quantity of good lands for

¹ Wai 1040, #1.1.245, also Wai 1679 #1.1.1 *Statement of Claim*, dated 28 August 2008.

their present and future needs. Reserves were rare and efforts to retain lands were consistently resisted or undermined by Crown acts and omission's.

- 1.7 The hapū are now landless with less than 500 acres of land remaining in mostly trust ownership. Clearly the Crowns concessions relating to landlessness in the Bay of Islands region must be specifically applied to Ngare Hauata and Te Uri Kapana.
- 1.8 The relatively small blocks that were put through the Native Land Court process, have largely been individualised and alienated from hapū ownership. These much smaller alienations are more keenly felt given the huge losses suffered through the Old Land Claims processes.
- 1.9 Particular attention has been drawn to some of the lands that have been retained. The land that makes up the Oromahoe Development Scheme which is now successfully run as an Ahu Whenua Trust were effectively lost to the owners of the lands for almost 30 years and for many owners the land was lost permanently when the Crown acquired their shareholding.

2.0 The Claimants

- 2.1 These submissions are filed specifically on behalf of the claims of Wayne Stokes and Maurice Penney on behalf of Ngare Hauata and Te Urikapana hapū, and the Kiwikiwi whanau and Remana and Arihi Kiwikiwi Whanau Charitable Trusts.²

3.0 Ngare Hauata and Te Urikapana hapū

- 3.1 Wayne Stokes set out the history of the hapū of Ngare Hauata, a hapū that featured in the southern alliance of Ngāpuhi hapū who fought against Ngāti Pou for the Taiamai rohe. During that era Whaingaroa was the principle leader of Ngare Hauata.³

² Wai 1040, #1.1.245, also Wai 1679 #1.1.1 *Statement of Claim*, dated 28 August 2008. The claimants have taken the opportunity within this Inquiry of Te Paparahi o Te Raki to gather their histories and in some cases, correct and clarify the historical record in their terms.

³ Wai 1040, #H9 *Amended Brief of Evidence of Wayne Stokes*, received 4 September 2013, p4.

- 3.2 There are many strong connections with the former and current hapū of Taiamai, including Ngāti Rangi at Ngawha, Ngāti Manu at Kororareka and Karetu, and Ngāti Hine.⁴
- 3.3 What has been named ‘the southern alliance’, was led by Te Morenga and other important rangatira. This alliance was located more in the Pouerua/Pakaraka area. It came to dominate the Taiamai plain, parts of the Pakaraka and Waitangi district, the Waiomio area, Kawakawa, the Paihia coast, and the Kororareka and Waikare regions of the coastal Bay. Its key hapu included: Ngare Hauata; Ngati Hineira; Ngati Rangi; Ngati Hine; and Ngati Manu.⁵
- 3.4 Te Urikapana are sometimes described as another branch of Ngare Hauata.⁶
- 3.5 After the conquest of Ngāti Pou, Ngare Hauata held the whenua at Pakaraka, east Taiamai and by 1815, they held and occupied the settlements at Tautoro, Taiamai, Pukenui, Ngawhitu and Okura.⁷
- 3.6 After Whaingaroa, Te Morenga took up the leadership for the hapū.⁸ Te Morenga was a hugely influential and powerful chief in his time, he was a contemporary of Hongi Hika and was both his occasional ally and adversary.⁹
- 3.7 Te Morenga formed a strong friendship with Reverend Samuel Marsden, it was this friendship that allowed the Reverend safe passage through much of the North.¹⁰ Te Morenga even visited the Reverend when he was stationed in New South Wales.¹¹
- 3.8 The Claimants tupuna were close with the Williams whanau for many years, working side by side with them, supplying them with labour and land to work on as they needed it.¹² Haki Taipa provided the Williams’ with land to work on in 1832, and the claimants’ great grandparents Remana and Alice Kiwikiwi worked with the

⁴ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p4.

⁵ Wai 1040 #A001, p. 36

⁶ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p4.

⁷ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p4.

⁸ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p5.

⁹ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p5.

¹⁰ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p6.

¹¹ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p6.

¹² Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p7.

Williams.¹³ Te Remana and his parents Te Waiwhakaruru and Hemi Kiwikiwi also worked with the Williams.¹⁴

- 3.9 Many of the rangatira of Te Urikapana and Ngare Hauata were signatories to Te Tiriti.

4.0 Duties of the Crown

4.1 At all times the Crown had a duty to:

- 4.1.1 Ensure that Ngare Hauata and Te Uri Kapana rangatiratanga was able to be maintained and supported;
- 4.1.2 Provide appropriate land transaction investigation regimes that recognized Ngare Hauata and Te Uri Kapana concepts of land tenure and provided for the same;
- 4.1.3 Consult with the hapu over any regime that effected Ngare Hauata and Te Uri Kapana, and obtain their consent to the same; and
- 4.1.4 Ensure that the claimants retained full exclusive and undisturbed possession of their lands for as long as they wished;
- 4.1.5 Actively protect the claimants rangatiratanga, lands and resources to the fullest extent practicable;
- 4.1.6 Act in good faith towards Ngare Hauata and Te Uri Kapana.

5.0 The Claims / Summary of Key Issues

- 5.1 Ngare Hauata and Te Urikapana key issues are the undermining of their Rangatiratanga, landlessness created by the Old Lands claims processes and the 19th Century Land Development Schemes, in particular the Oromahoe scheme.

¹³ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p8.

¹⁴ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p8.

5.2 The claimant's claims focus on the effects of:

5.2.1 the almost complete loss of their ancestral and customary lands and resources through Crown breaches of Te Tiriti o Waitangi ("Te Tiriti"), and by the actions of the Crown in implementing the investigation of old land claims and subsequent awards of title which denied the continuation of the hapū's reciprocal rights and interests, during the period 1840 to 1865;

5.2.2 The words of Wayne Stokes sum up the situation for the hapū best:

"Of the thousands of acres of land that our hapū once had direct kaitiaki over, we are now lucky to count double figures."¹⁵

5.2.3 What is left is held now in general title or is a part of a trust with other hapū and groups and frustrates hapū rangatiratanga.¹⁶

5.2.4 a loss of mana and rangatiratanga, control and customary entitlements over their ancestral waters, waterways and taonga at Taiamai and Pewhairangi, in particular, the Okura fishing ground;

5.2.5 the imposition of land legislation which enabled the Native Land Court to oversee the individualisation, partitioning and alienation of Ngare Hauata and Te Urikapana lands;

5.2.6 public works legislation which enabled lands to be taken for roading, and schools without reference to them or their customary ownership and without returning the land once it was surplus;

5.2.7 local government and environmental legislation which fails to properly recognise and acknowledge their kaitiakitanga and tangata whenua status and partnership with the Crown pursuant to Te Tiriti o Waitangi.

¹⁵ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p7.

¹⁶ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p7.

6.0 Te Ngare Hauata and Te Urikapana Rohe

6.1 As detailed in the claim and evidence¹⁷ the Claimants' rohe extends over and includes; Manowhenua Pa, Ngawhitu, Waitangi, Kerikeri, Ohaeawai, Pouerua, Ngawha, Wharau, Okura, Puketotara and Pakaraka and includes the rivers, streams and awa.

7.0 The Claimant Evidence

7.1 The witnesses whom have given evidence in support of this claim presented over the course of the opening hearing week at Waitangi, hearing week 4 at the Turner Centre in Kerikeri in September 2013, and hearing week 11 again at the Turner Centre in November 2014. The key tangata whenua witnesses who spoke in support of the claims are:

- a. Wayne Stokes¹⁸ and
- b. Leon Penny.¹⁹

7.2 The primary technical evidence that the claimants rely on in support of their claims include the following reports and briefs:

- a. *Northern Land and Politics: 1860-1910*, David Anderson Armstrong and Evald Subasic June, 2007;²⁰
- b. *"Not with the Sword but with the Pen": The taking of the Northland Old Land Claims* by Bruce Stirling and Richard Towers;²¹
- c. *Northland Block Narratives: Old Land Claims*, by Paula Berghan;²²

¹⁷ Wai 1040, #H9 *Brief of Evidence of Wayne Stokes*, received 13 August 2013, p6.

¹⁸ Wai 1040, #H9 *Amended Brief of Evidence of Wayne Stokes*, 4 September 2013 and Wai 1040, #O21 *Second Brief of Evidence of Wayne Stokes* dated 21 November 2014

¹⁹ Wai 1040, #O9 *Brief of Evidence of Leon Penny*, dated 13 November 2014.

²⁰ Wai 1040, #A012

²¹ Wai 1040, #A009

²² Wai 1040, #A039(a)Vol II

- d. *Tai Tokerau Māori Land Development Schemes 1930-1990* by Heather Bassett & Richard Kay;²³

8.0 Te Paparahi o Te Raki Stage 1

- 8.1 This Tribunal is undoubtedly aware of its findings in the Stage 1 Report and rather than repeat them again, Counsel simply acknowledges the Tribunal's findings and affirms that Ngare Hauata and Te Urikapana rangatira were amongst those whom as signatories to He Whakaputanga me Te Tiriti, did not agree to a cession of sovereignty to the Crown.

9.0 Issue 1: TINO RANGATIRATANGA, KĀWANATANGA AND AUTONOMY: POLITICAL ENGAGEMENT BETWEEN MĀORI AND THE CROWN

Generic Claimant Closing Submissions and Reply Submissions

- 9.1 The Claimants adopt for the most part the Generic Closing Submissions in relation to Issue 1.²⁴ However, the claimants depart from the Generic Submissions in some crucial areas. Counsel has read the Closing Submissions of Ms Dixon²⁵ for an on behalf of Te Patuharakeke and supports and adopts those submissions in so far as they depart from the generic submission.
- 9.2 The Claimants adopt the Generic Reply submissions to Crown closing submissions on Issue 1: Tino rangatiratanga, rangatiratanga, kāwanatanga and autonomy,²⁶ and in particular, support the submission as regards the Tribunal's exclusive jurisdiction²⁷ to determine whether the Crowns exercise of effective sovereignty is a breach of the principles of Te Tiriti and make further specific submissions below.

²³ Wai 1040, #A010

²⁴ Wai 1040, #3.3.228

²⁵ Wai 1040 #3.3.288

²⁶ Wai 1040, 3.3.450 dated 15 June 2018

²⁷ as set out in section 5(2) of the Treaty of Waitangi Act 1975

Summary of Key Points

- 9.3 Te Morenga and other Rangatira of Ngare Hauata and Te Urikapana regarded the Crown as a valuable ally and welcomed pakeha settlement and all the advantages it could offer to Ngare Hauata and Te Urikapana people. The rangatira and the hapū promoted within their domain harmonious and mutually beneficial relationships and outcomes.
- 9.4 Ngare Hauata and Te Urikapana individually and collectively continue to assert that their sovereignty, authority and autonomy was not ceded, relinquished or given up in any way by Ngare Hauata and Te Urikapana tupuna in the years after Te Tiriti, nor by any individual(s) representing Ngare Hauata and Te Urikapana nor by Ngare Hauata and Te Urikapana as a collective since 1840.
- 9.5 The imposed or effective sovereignty of the Crown over the hapū interests after the Te Tiriti arrangements, has come about through what can be described as a thousand paper cuts, it was gradual, insidious and never accepted or agreed to by the hapū and is therefore a breach of Te Tiriti.

Facts and Evidence Relied On

“...Taiamai is distinctive for the determined efforts of its people to engage formally with European settlers, and for its being the ‘cradle’ of government from the time of Te Tiriti o Waitangi’s signing.”²⁸

- 9.6 The 1831 Petition or letter to King William was signed by Te Morenga who also took part in the choosing of Te Kara in 1834.
- 9.7 He Whakaputanga/the Declaration of Independence was signed by the following rangatira of Ngare Hauata and Te Uri Kapana:
- a. Kiwikiwi,
 - b. Te Morenga,

²⁸ Wai 1040, E033 p.188

- c. Te Ngere,
- d. Te Marupo and
- e. Tamati Pukututu.²⁹

9.8 Te Tiriti was signed by the following rangatira of Ngare Hauata and Te Uri Kapana:

- a. Haki Taipa. Haki was described by the Crown as:

*Hake Taipa. Age 70. Ngawhitu. "Quiet. A chief of first class, was engaged against the Government in Heke's war, since then he has been quiet and well-disposed."*³⁰

- b. Te Kemara (Ngare Hauata, Ngāti Kawa, based at Waitangi);
- c. Te Kanawa (Ngare Hauata and Te Urikapana);
- d. Ngere (Te Urikapana);
- e. Kaitara Wiremu Kingi (Ngāti Hineira, Te Urikapana, a nephew of Te Morenga, based at Taiamai); and
- f. Marupo (Ngāti Kawa, Ngāti Hauata, based at Pouerua and Waitangi).³¹
- g. Himi Marupo. Described by the Crown as:

*Age 40. Oromahoe. Conduct good. "Lately a member of the Runanga, now an Assessor, active and intelligent, son of the late chief Marupo, and acknowledged head of the sub-tribe to which he belongs".*³²

- h. Piripi Korongohi. Described by the Crown as:

Age 60. Tautoro. "Moderate. Chief second rate actively engaged during Heke's war, against us, since then quiet... well-behaved, he was a

²⁹ Wai 1040, Ralph Johnson, Northern War 1844-1846, #A05 p.33

³⁰ Wai 1040 #A012 p. 1543

³¹ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p6.

³² Wai 1040 #A012 p. 1542

*member of the Runanga and was dismissed for ill-conduct - not very influential”.*³³

- 9.9 The rangatira established good relationships with key pakeha and regularly enforced tikanga within their domain.
- 9.10 Examples of acting according to the Rangatiratanga and/or enforcing customary law that have been provided in the evidence include:
- a. Arranging marriages with ‘their pakeha’ to consolidate relationships between the hapū people and the settlers.
 - b. Establishing and maintaining ongoing reciprocal rights and obligations with settlers;
 - c. Continuing to occupy lands transacted with the Williams’ family and pakeha settlement on hapu land only occurred with the continual permission of the hapu.
 - d. Continual use of tikanga Maori to resolve disputes both between people of the hapu and with other hapu and with pakeha.
 - e. By acting autonomously during the Northern War years and actively opposing the Crown’s imposition of sovereignty and aligning with Heke and Kawiti.
 - f. By resolving land disputes according to Maori custom such as the Te Ahuahu dispute in 1867.
 - g. Resisting the payment of Dog Tax.
- 9.11 Specific examples of the hapu remaining autonomous and asserting their continual authority are set out in more detail below

³³ Wai 1040 #A012 p. 1543

1840-1844

- 9.12 The Crown submission is that in the few instances that British law was applied it was with the consent of the rangatira.³⁴ Counsel submits that this reinforced the relationship rangatira had forged through Te Tiriti and reinforced an expectation that there would not be any imposition of British law without their agreement.
- 9.13 Henry Williams records the ongoing use of tikanga of the hapū around him at Pakaraka. For instance when a Rotorua Maori murdered one of Williams' Maori shepherds in early 1842 on what the missionary considered as his exclusive land at Pakaraka, he sent the culprit off to jail at Kororareka. The man had to be released four days later, as Kawakawa Maori would not stand for it, 'it being altogether a native affair'. The fight had been over a woman and the Kawakawa people felt that provocation had been offered – that is, that the killing had been justified in customary terms. It made no difference, to Williams' chagrin, that the act had been committed on a European's land.³⁵

1844 -1858

- 9.14 Detailed submissions on the Northern war are set out below. The Hapu fought against the Crowns imposition of sovereignty and in defence of hapu rangatiratanga as agreed by Te Tiriti.
- 9.15 After the war period, in May 1850 Henry Williams was informed of his dismissal from the CMS, with instructions that he vacate the mission station at Paihia the Kawakawa people under Tamati Pukututu eventually consented to Williams' removal inland to Pakaraka.³⁶ His relocation was by permission of rangatira.
- 9.16 As regards Ngare Hauata and Te Urikapana authority over their lands, even those transacted with pakeha and missionaries, Dr Phillipson reports that the position at the end of the decade [1850] was summed up by Henry Williams. He informed the CMS that the mission families were the only ones that had been able to stay on their land in the interior of the Bay of Islands. Europeans were

³⁴ Wai 1040, 3.3.402 A Irwin, Closing submissions of the Crown on Issue 1: Tino Rangatiratanga, Kāwanatanga and Autonomy, 20 Sep 17 para 129

³⁵ Wai 1040 #A001 p. 325

³⁶ Wai 1040 #A001 p. 167

subject to the custom of muru, but more importantly their tenure was still by permission of their host communities. Given Williams' staunch defense of his titles, his admissions are striking:

The value of this [mission family-owned] land of which so much has been said is less than nominal, as all in this District, certainly, occupy alone by sufferance, subject to the will of any turbulent set of boys. The more capital therefore under existing circumstances that may be expended upon this land, in the way of buildings, general cultivation & improvement, the greater the risk. The late war establishes this fact. The character of the people in the field is ably expressed by Gov Grey in his Dispatch. In this District no persons are cultivating the ground, or holding stock, but the Sons of the Missionaries. There is no location of Settlers for the above reason, the uncertainty of tenure. Any trifling circumstance may lead to the stripping of a settler, to his utter ruin, and no protection can be afforded by the Govt either to person or property.³⁷

9.17 Again pakeha occupation of the hapu estate was by permission.

1860 Kohimarama Conference

9.18 There were several ...rangatira who attended the Kohimarama conference and spoke there on behalf of the hapū.

The Kohimarama Conference represented a Crown commitment to political partnership. As far as they were concerned this partnership did not signal - or require - the subordination of their own customs, values and aspirations. They seemed willing to shed some aspects of their custom law in cases where this militated against the achievement of their economic and other aspirations, and work with the European Magistrates on a number of levels. But any compromise would be on their own terms and designed to achieve their own objectives. A key objective for the northern iwi remained - as in earlier decades - beneficial participation in the new settler economy. The introduction of legal, administrative and other measures which might encourage and permit this were therefore welcome, so long as they served desired Maori goals, and so long as Maori continued to control the process.³⁸

³⁷ Wai 1040 #A001 p. 167

³⁸ Wai 1040 #A012 p.8

- 9.19 The speech by the Governor Gore-Brown at the Kohimarama conference created an expectation and understanding amongst those present that a heightened level of Maori participation in the law-making process itself was to follow.

1867 Native Land Court Disputes

- 9.20 Ngarehauata, led by their chief Piripi Korongohi, were involved in a dispute at Ahuahu (or Rawhitiroa) when the hapu threatened to take possession of some land and sell it to Europeans. Wiremu Katene, a chief of the Uritaniwha hapu, ordered them off the land and offered to give them some sheep and horses to "quiet them, to induce them to end the dispute about the land", but they refused "to come to terms and remain quiet". In the absence of a consensus Wiremu Katene then appears to have made an application for a title determination in the Native Land Court which was scheduled to sit at Waimate under Maning on August 1.
- 9.21 Later it was rumored that Ngarehauata had agreed to lease or sell the land to George Clarke's sons, and had accepted an advance payment. Wiremu Katene immediately consulted his hapu and they resolved to prevent the sale of the land. A house erected on the land by Ngarehauata was pulled down by the Uritaniwha. Several shots were exchanged, but no casualties occurred. Williams continued to try to settle the dispute, but without success. By June 27 pa had been built by both sides, and each was said to be occupied by up to 100 armed warriors. 20On July 15 the fighting intensified. Williams efforts to stop the fighting did not come too much. Several men were killed and a number were wounded. On the Ngarehauata side Renata Kawana and Hone Patau had fallen and others were injured. These deaths threatened to lead to a further escalation as relatives and friends of the dead and injured joined the fray from Waimate, Waikare, Kawakawa, and other places.
- 9.22 Soon 500 armed men were present, making it the largest gathering of warriors in the north since the Northern war. Skirmishing and long-range sniping continued for several more days, but ceased on July 26 when the combatants, hearing of the death of Archdeacon Williams, suspended the fighting out of respect for him. The Ngarehauata chief Te Haratua had apparently promised Archdeacon

Williams long ago that he would cease fighting, and felt that by breaking his promise and participating in the current conflict he had somehow contributed to the clergyman's death.

- 9.23 In the meantime Tamati Waka Nene had arrived, and a further peacemaking party of Hokianga chiefs, accompanied by a large party of warriors, was expected imminently. Uritaniwha were not confident that the Hokianga chiefs would have much sympathy for their claims, and tried, on August 2, to bring the matter to a conclusion before their arrival by attacking their opponents in full force. They were not successful.
- 9.24 In the end peace was achieved not by Resident Magistrate Williams, but through the intervention of Tamati Waka Nene and the other Hokianga chiefs - including Aperahama Taonui with 150 of his men - who had arrived on August 2. By August 24 all those involved had returned to their homes to face, as the *Daily Southern Cross* noted, the usual consequence of such events: "semi-starvation and sickness".
- 9.25 The Native Land Court Assessors Hone Mohi Tawhai and Rawiri also played an important role in averting further blood-shed. Williams felt that all the peacemakers should be thanked and acknowledged by the Government, and they subsequently received letters from the Governor. In terms of the peace settlement, it was agreed that no Land Court adjudication would take place and that the land would remain unoccupied. Williams predicted that Piripi Korongahi's group would ultimately withdraw their claims in favour of their opponents.
- 9.26 Williams was certain the dispute had been caused by the intervention of settlers seeking to purchase the land. It was unfortunate, he mused, that such a conflict should have arisen among previously "well-behaved" Maori, but "of course, the selling of lands to Europeans will tend to bring the old tribal disputes to a point". The Magistrate also noted that the combatants had been careful to avoid involving settlers. He recounted that after the parties had taken up positions on either side of the Kaikohe road and begun fighting, a party of Pakeha travellers was observed approaching. The call was immediately raised to clear the road for

them, which was done, and both parties ceased fire until the travellers had safely passed.

9.27 This Waimate dispute was finally settled in early-1871. Wiremu Katene and Piripi Korongahi, said to be on the best of terms by this time, permitted Williams to divide the block, after which the Native Land Court was presumably called upon to confirm the arrangements. Williams subsequently arranged a division of the land, and all appeared satisfied.³⁹

9.28 It should be noted that very little of the hapu lands remained after the Old Land Claims processes and thus the hapu were not required to engage much in the Native Land Court processes.

Resisting the Payment of Dog Tax

9.29 In 1892, the hapū participated in and upheld the collective declaration not to pay dog tax. This was effectively an assertion of Maori rangatiratanga and a strong political statement which the Government understood to be a direct challenge to its own authority.⁴⁰

Submissions in Reply to the Crown Position

9.30 The Crown has maintained its perspective on the singularity of its sovereignty as detailed in its Statement of Position:

the singularity of the Queen's sovereignty was made clear in two documents following Te Tiriti/the Treaty. In December 1840 Hobson was given further instructions by Lord Russell. The instructions say that when Maori:

laws and customs lead one tribe to fight with, drive away, and almost exterminate another, the Queen's sovereignty must be vindicated, and the benefits of a rule extending its protection to the whole community must be made known by the practical exercise of authority.⁴¹

³⁹ Wai 1040 #A012 p.418-419

⁴⁰ Wai 1040 #A012 p.1346

⁴¹ Crowns Statement of Position and Concessions Wai 1040 #1.3.2 p.40

9.31 And the Crown asserts that:

the guarantee of tino rangatiratanga was to be given effect under the umbrella of the Crown's sovereignty. In 1840, that meant non-interference with Maori law and custom. What it meant to give effect to tino rangatiratanga for the future was not precisely known or decided in 1840. ... Ngapuhi remained largely in control of their own affairs until the 1860s.⁴²

9.32 The Crown further asserts in closing submissions that:

the Crown acquired sovereignty in New Zealand in a series of jurisdictional steps.

9.33 Despite the Stage 1 findings the Crown has opted to stick dogmatically to its position as though it knows better than the independent forum it established to determine such things. In Counsel's submission, the Crown's position cannot be construed in any way consistently with the Stage 1 findings and therefore is unsustainable unless the Tribunal were to depart from its Stage 1 findings. The claimants urge the Tribunal to leave intact its Stage 1 findings as the starting point for this issue and follow through with its logical line of Inquiry.

9.34 Whilst, the Crown has accepted it was not capable of imposing substantive sovereignty in 1844, and for some decades after, it remains unclear at what point after this it claims to have achieved substantive, or effective, sovereignty.⁴³

*It is the case that the British ultimately intended that the Crown should exercise substantive control over affairs in Northland. However, Fitzroy wanted to achieve this without violent conflict. He recognised that **the Crown was not capable of imposing substantive sovereignty in September 1844, and did not attempt to do so.**⁴⁴*

9.35 It is the claimants position that whilst the Crown might believe that it has, at some unknown point in time, imposed on Te Ngare Hauata and Te Urikapana substantive sovereignty, it has never done so with Te Ngare Hauata and Te

⁴² Crowns Statement of Position and Concessions Wai 1040 #1.3.2 p.41

⁴³ Crown's Statement of Position and Concessions, Wai 1040 #1.3.2, p.81.

⁴⁴ Crown Statement of Position and Concessions dated 6th July 2012 p.81 para 286.2 (Wai 1040 # 1.3.2)

Urikapana consent, and the hapū to this day hold to the position that they have never ceded their sovereignty nor acquiesced in any way to the Crown's imposition of sovereignty.

9.36 In Te Ngare Hauata and Te Urikapana's case, it is asserted that the Rangatira were actively engaged with the new settler environment whilst maintaining their authority and control throughout this new era. Te Ngare Hauata and Te Urikapana consistently sought to create mutually beneficial arrangements with pakeha, including Crown officials when interests overlapped or intersected, and in relation to the administration of laws, Te Ngare Hauata and Te Urikapana rangatira sought to be lawmakers and administrators of the law as they accepted it to exist.

9.37 As the signing of Te Tiriti was not a cession of sovereign authority to the Crown, the Rangatira of Te Ngare Hauata and Te Urikapana intended to retain their pre-existing mana and rangatiratanga over their peoples and their rohe. The existence of their rangatiratanga pre-dated the arrival of the Crown and the settler communities as a matter of fact. In Counsel's submission, this is also recognised by the English text of the Treaty in confirming and guaranteeing the full exclusive and **undisturbed** [emphasis added] 'existing' possession to the Rangatira, hapū and people. Therefore, the Crown in recognising that Rangatira already held authority over their people and resources were not anticipating taking any active step to "give effect to it" at 1840. It existed in fact and there was nothing the Crown needed to do (nor did) to 'grant' its existence, it was to be '**undisturbed**'.

9.38 The language of Te Tiriti reflected retention and maintenance of tino rangatiratanga, and not some Crown granted authority. Therefore, the retention of Hapū authority was not ever a matter that existed under the umbrella of the Crown's sovereignty, but in its own right.

Two Kinds of Authority – Equal In Power

9.39 The Crown agrees that the treaty resulted in two kinds of authority: the Crown's kawanatanga and Māori tino rangatiratanga and also agrees that quite how the two forms of authority were to relate to each other was not made clear in the

treaty.⁴⁵ However, It argues that it was clear that rangatira were being asked to agree to the 'Kawanatanga o Te Kuini' applying to all places,⁴⁶ by the use of the words "...te Wenua nei me nga Motu" as evidence that Māori would have understood that the Governor's new form of authority (kawanatanga) would apply to them and their land in some way.⁴⁷

9.40 Counsel submits that it's a long bow to draw that because Maori understood kawanatanga would apply to their places in some way that this meant they were agreeing to singular incontrovertible sovereignty.

9.41 The terms of the preamble of Te Tiriti only reinforce the stage One findings that the Crown's authority was to extend over its own subjects (whether they be located on whenua Maori or not) because of the Queens desire to protect Maori from its subjects "...noho ture kore ana". Where the making and application of such laws was in any way to affect the tino rangatiratanga of the rangatira then they had every right to safeguard their position and were not bound to simply have laws applied to them or their peoples or properties that they did not agree with. This intersecting of the two authorities was always to be, in a te Tiriti compliant world, negotiated and agreed with the rangatira, not imposed or assumed to apply simply because the Crown did not bother to ascertain the views of rangatira.

9.42 Therefore, the Crown's view that rangatira did understand they were to come under the authority of the Governor to some extent, which in turn implies the two forms of authority were not equal,⁴⁸ cannot hold up.

9.43 The Crowns argument that the Governor's kawanatanga was a new power. It was to have a national focus, that is, it was to apply throughout the entire area over which Britain claimed sovereignty. Its geographic reach therefore was different to

⁴⁵ Wai 1040, 3.3.402 A Irwin, Closing submissions of the Crown on Issue 1: Tino Rangatiratanga, Kāwanatanga and Autonomy, 20 Sep 17 para 48, p24

⁴⁶ Wai 1040, 3.3.402 A Irwin, Closing submissions of the Crown on Issue 1: Tino Rangatiratanga, Kāwanatanga and Autonomy, 20 Sep 17 para 53.1, p26

⁴⁷ Wai 1040, 3.3.402 A Irwin, Closing submissions of the Crown on Issue 1: Tino Rangatiratanga, Kāwanatanga and Autonomy, 20 Sep 17 para 53

⁴⁸ Wai 1040, 3.3.402 A Irwin, Closing submissions of the Crown on Issue 1: Tino Rangatiratanga, Kāwanatanga and Autonomy, 20 Sep 17 para 64, p29

tino rangatiratanga,⁴⁹ is also not evidence of an unequal relationship. Tino rangatiratanga was being guaranteed to all rangatira in the country and there was no part of the country that was not governed by one or more rangatira. That the British Crown had evolved in such a manner that it had one sovereign at the top does not make it a more superior governance model than that which was common to Aōtearoa in which rangatira of hapū and lwi maintained their several sovereignties. The geographic reach of the respective authorities is irrelevant.

9.44 The Tribunal has found:

The critical point, however, is that for the most part hapū remained in control of their territories, and continued to act in ways that were consistent with their own system of law, both in relation to their own people and in relation to Europeans. Taua muru continued to occur against Europeans who violated tapu or failed to fulfil obligations to their hosts. Hapū continued to act separately or in concert depending on which course suited their interests, but in either case remained wholly autonomous; cooperation or conflict depended, as it always had, on what best served atua, as expressed through tapu.⁵⁰

9.45 The Crown has submitted that:

Through the 1840s and 1850s, and with few exceptions, the Crown did not impose British law on Northland Māori. Life changed little for most Northland Māori. Nonetheless, the treaty created a political and constitutional relationship that shaped how the executive ought to use its legal powers and how government ought to engage with Māori authority. In 1844 Governor Fitzroy stated to Ngāpuhi rangatira that the treaty was “to give them [Maori] all the advantages of English laws; but not to interfere with their own laws against their consent, while affecting only themselves”. In 1844 and 1846 Governors Fitzroy and Grey enacted ordinance that sought to apply British criminal law to Māori through the involvement of rangatira. The ordinances are generally accepted to have respected the exercise of Māori chiefly authority by rangatira.⁵¹

⁴⁹ Wai 1040, 3.3.402 A Irwin, Closing submissions of the Crown on Issue 1: Tino Rangatiratanga, Kāwanatanga and Autonomy, 20 Sep 17 para 66, p30

⁵⁰ Wai 1040 Stage 1 Report, p.503

⁵¹ Wai 1040, 3.3.402 A Irwin, Closing submissions of the Crown on Issue 1: Tino Rangatiratanga, Kāwanatanga and Autonomy, 20 Sep 17 para 6.12, p6-7

- 9.46 The above example cited by the Crown only reinforces the claimants position that any imposition of Crown kawanatanga over Maori was to be with Maori consent through the involvement of rangatira.
- 9.47 The Crown also submits that both forms of authority - kawanatanga and tino rangatiratanga - were therefore to relate to “o ratou wenua” – Maori lands – but in ways that were largely not specified in the treaty⁵², again reinforces the point about the respective spheres having equal status. There was no agreement explicit or implied that the Crowns authority was superior to that of the rangatira’s undisturbed authority. To assume as such would automatically breach the terms of the treaty that the rangatira’s domain was to remain undisturbed.

Sovereignty through Settlement/ taking possession of land

- 9.48 Some experts have pointed out that the more acceptable approach for the Crown to acquire effective sovereignty was through settlement “by taking possession” and “establishing an administration over territory.”⁵³
- 9.49 It is a key fact in the Te Ngare Hauata and Te Urikapana claims that they are a virtually landless hapū and that the hapū lost most of its lands through the Old Land Claims process and to the Crown in the early years following the signing of Te Tiriti.
- 9.50 In so far as the nominal sovereignty of the Crown wrongly proclaimed in 1840 was transformed into effective sovereignty through the acquisition and settlement of land with an attendant administration, it is the claimants’ submission that specific informed consent of their rangatira would need to be freely given as a distinct act. That is, that the acquisition of land by the Crown and/or settlers in and of itself is not effective sovereignty. This is particularly evident where the acquisition of land was in and of itself in breach of Te Tiriti as it was in the case of the Old Land Claims and Crown purchasing. The Crown cannot rely on later substantive treaty breaches to give credence and legitimacy to its assumed singular sovereignty.

⁵² Wai 1040, 3.3.402 A Irwin, Closing submissions of the Crown on Issue 1: Tino Rangatiratanga, Kāwanatanga and Autonomy, 20 Sep 17 para 58

⁵³ Matthew Palmer, *The Treaty of Waitangi in New Zealand's Law and Constituion*, Wellington, 2008, p.165.

9.51 At no point did Te Ngare Hauata and Te Urikapana rangatira agree that the Crown would hold effective sovereignty over them because settlers took possession of land.

9.52 At no point did Te Ngare Hauata and Te Urikapana rangatira agree that the Crown would hold effective sovereignty over them because the Crown took possession of land. This was not what was agreed at the signing of Te Tiriti or anytime thereafter.

Article 3

9.53 The Crown has asserted that Article 3 of the treaty re-enforces the idea that Māori, by gaining the “privileges” that British subjects enjoyed, were also assuming the obligations of what it meant to be a British subject.⁵⁴ This is not made out by any facts, nor can it be supported by the plain reading of the words in article 3.

‘Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

9.54 All the rights and privileges were imparted to Maori not all the laws and obligations.

⁵⁴ Wai 1040, 3.3.402 A Irwin, Closing submissions of the Crown on Issue 1: Tino Rangatiratanga, Kāwanatanga and Autonomy, 20 Sep 17 para 53.4, p26

10.0 Issue 2: OLD LAND CLAIMS, SCRIP AND SURPLUS LANDS

Generic Claimant Closing Submissions and Reply Submissions

- 10.1 The claimants adopt the generic claimant closing submissions on Old Land Claims, Scrip and Surplus Lands⁵⁵ and the Submissions in reply to Crown closing submissions on Issue 2: Old land claims, scrip and surplus land⁵⁶ and further state that as a result of the Old Land Claims processes and the Crown's surplus lands policy Ngare Hauata and Te Uri Kapana lost in excess of 11,000 acres.
- 10.2 In reply to the Crown's assertion that the Old Land Claims Commission could only recommend a land grant where they decided a permanent alienation had taken place⁵⁷ Te Ngare Hauata and Te Uri Kapana submit that rangatira were engaging with pakeha who wished to reside on their lands prior to the signing of Te Tiriti within the existing Maori systems for exchange of goods and the allocation of use rights to resources.
- 10.3 Land was managed with their pakeha as part of incorporating them into the hapu community as well as to provide for the children of missionaries, in particular the children of Henry Williams.
- 10.4 The land having been allocated within a Maori customary framework meant an ongoing and mutually beneficial relationship between the Pakeha guest and the hapu host community was expected.
- 10.5 Where land and resources was allocated, it was conditional on some or all of the following:
- a) The resident living on the land amongst the hapu;
 - b) Extensive ongoing use of the land by the hapu;

⁵⁵ Wai 1040, 3.3.222 *Generic Closing Submissions on Old Land Claims, Scrip and Surplus Land*.

⁵⁶ Wai 1040, 3.3.430, L Thornton, *Submissions in reply to Crown closing submissions on Issue 2: Old land claims, scrip and surplus land*, 15 May 18

⁵⁷ Wai 1040 #3.3.412, *Closing Submissions of the Crown Old Land Claims, Scrip and Surplus Lands Issue 2* dated 6 October 2017, p.3

- c) Continued occupation of the land by the hapu;
- d) Further payments being made;
- e) Hapu control over the lands resources and wahi tapu; and
- f) The continuation of Maori law over the areas being occupied.

- 10.6 The hapū had no intention that the land would be alienated from them in the nature of a sale. The intention of the rangatira was to manaaki settlers into hapū communities and establish enduring long term and reciprocal relationships with their pakeha, and secure for Ngare Hauata and Te Uri Kapana the advantages of an economic and technological nature that pakeha settlement amongst them would bring.
- 10.7 The hapu were assured that none of the transactions completed before the 15 January 1840 proclamation would be recognized by the Crown until their validity had been investigated and ascertained by the Crown.
- 10.8 The investigations were carried out by the Old Land Claims Commission from 1841-1844 and the commission's recommendations resulted in the issuing of Crown Grants to the Williams'. None of the land invalidly acquired was retained by the hapu.
- 10.9 The Crown imposed European assumptions of land tenure on the hapu and concurrently displaced traditional methods of Maori land tenure without hapu consent through the enactment of the New South Wales Land Claims Act 1840 and the Land Claims Ordinance 1841 which established the Land Claims Commission ("the Commission").
- 10.10 The Commission reflected Crown assumptions of English Law such as:
- a. The Crown held radical title to all land in New Zealand from 6 February 1840;
 - b. Maori acceptance of Pakeha forms of conveyance;

c. Transactions amounted to an extinguishment of Native title;

10.11 The Commission failed to protect Ngare Hauata and Te Uri Kapana interests when it investigated more than 13 land claims within Northland, despite the requirements that the Commission was to:

a. inquire into the equity of the claims;

b. inquire into the validity of claims;

c. ensure that the native title had been extinguished in accordance with Maori custom; and

d. be guided by the real justice and good conscience of the case without regard to legal forms and solemnities.

10.12 It is submitted that the evidence is clear that the Old Land Claims commissions:

a. were not neutral and impartial bodies, but rather a mechanism to achieve the Crown's colonial project.⁵⁸

b. had little knowledge or understanding of Ngare Hauata and Te Uri Kapana customs.

c. relied heavily on the advice, assistance and interpreting of the Protectorate of Aborigines.

d. The Protectorate of Aborigines were unable to provide the Commission with the assistance it needed to understand Maori customs and Maori land tenure in general and the specific tenurial situation and range of Maori rights holders in the land being claimed.

e. The Protectorate of Aborigines was made up of personnel who had a conflict of interest in the outcome of the investigations and awards of the Commission.

⁵⁸ Stirling and Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, pg. 281

- f. The Protectorate was dominated by Missionaries who were either land claimants themselves or the sons and brothers of land claimants.
- g. The Protectorate of Aborigines had a variety of other duties to perform for the Crown which stretched their ability to assist the Commission; and
- h. The Commission rarely considered the equity of the claims vis a vis the Maori interests holders; and
- i. Were instructed by the Attorney General that terms “just and reasonable” in the Titles Ordinance 1849 did not concern Maori.⁵⁹
- j. The Commission failed to take into consideration whether fair value had been paid for Maori lands.
- k. The Commission was instructed that the equity of the value or price paid for lands should not affect the validity of the extinguishment of title;
- l. The Commission failed to consider whether the payment made was sufficient, and equitable given that the transaction was being treated by the Crown as a complete and permanent alienation;

10.13 The Old Land Claims Commission assumed that land deeds arranged with Maori equated to full and final sales despite being aware of evidence suggesting the arrangements were not full and final sales such as:

- a. the ongoing occupation of lands by the hapu;⁶⁰
- b. ongoing use of lands by the hapu;
- c. ongoing payments expected and received by the hapu.⁶¹
- d. The continuation of tikanga Maori applying over the land and any incidents which occurred on the land.

⁵⁹ Stirling and Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, pg. 250

⁶⁰ Stirling and Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, pg. 327

⁶¹ Stirling and Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, pg. 334

- 10.14 The commission failed to adequately define and/or survey blocks;
- a. blocks could not be defined either by quantity (acreage) or by accurate boundaries.⁶²
 - b. The Commission failed to recognize and or clearly identify and provide for un-extinguished Maori interests on claims.
 - c. The commission failed to investigate whether the transactions were conducted with all the Maori right holders, and;
 - d. failed to ensure the interests of the excluded right holders were recognized and protected;
 - e. Almost all claims that were presented to the Commission were approved even when Maori provided evidence of un-extinguished Maori interests.
 - f. The Commission was aware of but failed to take account of misleading evidence and out of court deals when making its awards.
 - g. The Crown transformed the awards made by the Commission into exclusive and absolute alienations.

- 10.15 The Crown issued grants through Fitzroy which:
- a. Were mostly un-surveyed and left exact locations of grants and extent (acreage) of grants unclear; and
 - b. Often arbitrarily extended beyond the acreage awarded by the Commission and beyond that statutory limit.⁶³
 - c. Did not ensure certainty in either the claims process or the grants which were issued resulting ongoing in confrontation between Maori and claimants.

⁶² Stirling and Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, pg. 326

⁶³ Stirling and Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, pg. 416

- d. Fitzroy asserted the grants conferred a conditional rather than absolute title to claimants and that the claimants and Maori over time would reach agreements about un-extinguished Maori interests.

10.16 Did not set aside reserves for Maori right holders but excluded altogether reference to un-alienated Maori rights or interests:

- a. allowing such lands to be alienated through another transaction or being included in surplus lands held by the Crown;⁶⁴ and
- b. seemingly gave clear title to a defined acreage within a poorly defined wider claim, on the basis that Maori title had been validly extinguished.⁶⁵

10.17 Old Land Claims within the Ngare Hauata and Te Uri Kapana rohe resulted in an absolute alienation of Ngare Hauata and Te Uri Kapana lands in breach of the Crown’s promise that the investigation of the old land claims would ensure the retention by hapu of land not validly acquired.

10.18 As a result of Old Land Claims that were awarded by the Old Land Claims Commission Ngare Hauata and Te Uri Kapana lost rights to approximately 10,000 acres to private individuals and approximately 1,000 acres in surplus lands to the Crown.

Old Land Claims within Ngare Hauata and Te Uri Kapana Rohe

10.19 Most of the land of Ngare Hauata and Te Uri Kapana which was subject to Old Land Claims processes is summarised in the table below.⁶⁶

Block Name and names of hapu members involved	OLC No	Award (acres)	Surplus land retained by the Crown
--	---------------	----------------------	---

⁶⁴ Stirling and Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, pg. 306

⁶⁵ Stirling and Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, p. 584

⁶⁶ The table does not account for the reserves which were lost later.

Pakaraka and Pouerua and parts of the Taiamai plains	OLC 521	1000	0
Pouerua from Kamera, Tao, Hapetahi, Marupo and others	OLC 522	3000	0
Hihi from Kamera, Tao, Puku and others	OLC 523	500	0
Pukeaira from Kamera, Tahirangi, Hapetahi, Tao and others	OLC 524	2000	1043 ⁶⁷
Pakapu from Tao, Tahuahi, Haretua and others	OLC 525	500	0
Puketona from Heke, Kamera, Tao and others	OLC 526	2000	300
Umuhaku from Haki and Piripi Haurangi	OLC 529	300	0
Taiamai from Hake, Piripi, Haungtangia(sic), Hopine, Matui and others	OLC 530	400	0
Taiamai from Kia and Hiamoe and Paora Hako	OLC 531	20	0
Taupotaka from Kaitoke and Waki	OLC 532	20	0
Uropi, Koao and Kioneone" from Hautungia, Rapa, Hiamoe, Ngehe and Ngari	OLC 533	100	0
Maungaturoro from Ruka, Taka, Hotu, Hamu, Matiu, Poutu and others	OLC 534	50	0
Kauwau	OLC 535	120	0
Total land loss		9010	1343

Facts and Evidence Relied On

10.20 The old land claims at issue are OLC 521-526 and OLC 529-535, which were claims of land purchased by Henry Williams and William Williams for themselves and their children. The Māori land which these claims concerned was Pakaraka and Pouerua and parts of the Taiamai plains.

10.21 The account of what happened to the land at Pakaraka and Pouerua and the way the Williams betrayed the agreement with the rangatira and obtained full European title, was, as the claimants themselves stated, actions which caused

⁶⁷ Wai 1040, A48(a) B Rigby, Validation review of the Crown's tabulated data on land titling and alienation for the Te Paparahi o Te Raki inquiry region: Old land claims, surplus land and scrip, 1 Oct 14, Spreadsheet accompanying report, 19 Sep 16

great “confusion and dismay” as it went against the agreement that had been arranged.⁶⁸

- 10.22 The approach to the evidence below deals first with the technical details as considered by the Old Land Claims Commissions, gathered by Paula Berghan, to outline the information which the Commissions used to justify the alienations. This is followed by the analysis and background research of Stirling and Towers which provide the context of the dealings, and show that much of the important detail was not presented to the Commissions, or was not considered material.
- 10.23 It is important to note from the outset that those rangatira supporting the applications to the Commissions, were supplying only evidence that it was the applicant that they dealt with, the nature of the alienation was not a matter the rangatira spoke to.
- 10.24 This analytical evidence shows that the alienation of all these lands at Taiamai were in breach of Te Tiriti and its principles and resulted in the loss of vast territories of land. The rangatira involved had never agreed to alienate the land at all; they had simply allowed chosen those Pākehā to occupy the hapu lands with them.

OLC 521-526 – The Henry Williams claims

- 10.25 Henry Williams made claims over six blocks, numbered 521-526.

OLC 521

- 10.26 Henry Williams obtained access and use of land at Titirangi, Ahikakariki and Kaipaoa from Te Ngare, Hakem(sic), Morenga(sic) and Motai on the 12th of December 1833.⁶⁹ The arrangement appears to have been for 1,000 acres.⁷⁰ Williams paid £5 in cash and goods valued by the Commission at £116 and 18s.⁷¹

⁶⁸ Wai 1040, #H9 *Amended Brief of Evidence of Wayne Stokes*, received 4 September 2013, p9.

⁶⁹ Wai 1040, #A39(a)Vol II, Paula Berghan, *Northland Block Narratives: Old Land Claims*, p319.

⁷⁰ Wai 1040, #A39(a)Vol II, Paula Berghan, *Northland Block Narratives: Old Land Claims*, p319.

⁷¹ Wai 1040, #A39(a)Vol II, Paula Berghan, *Northland Block Narratives: Old Land Claims*, p319.

10.27 The claim to the land was made to the Old Land Claims Commission on the 15th of October 1840, and was heard on the 4th of November 1841.⁷² Ngare gave evidence in support on the 16th of November, Matiu and Hake on the 22nd of November 1841. Williams resumed to give evidence on the 27th of January 1842.⁷³ Henry Williams evidence was that:

*All my deeds state that the land is given to me for myself and children and the Natives have always considered them as virtually belonging to the tribe they were born amongst.*⁷⁴

10.28 Commissioner Richmond and Godfrey recommended an award of 468 acres and that the “sacred places” Tomotomokia and Umutakina [Umutakiura] be excluded on the 2nd of May 1842, and this was confirmed on the 24th of August 1842.⁷⁵

10.29 However, the award was disallowed under the 1842 New Zealand Land Claims Ordinance and was re-calculated. The re-calculated amount was going to be restricted by the maximum award of 2,560 acres for all the Williams claims.⁷⁶ Fitzroy was informed of this and because of his intervention Williams was awarded a final grant of 1,000 acres.⁷⁷ Therefore, with all the Williams’ grants added together they exceeded the maximum award allowed.

OLC 522

10.30 Henry Williams obtained access and use of land at Pouerua from Kamera, Tao, Hapetahi, Marupo and others on 21 January 1835.⁷⁸ This was for approximately 3,000 acres. Williams paid £50 in cash and goods valued by the Commission at £522.18.⁷⁹ The claim was made on the 15th of October 1840.⁸⁰

⁷² Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p319.

⁷³ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p319.

⁷⁴ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p320.

⁷⁵ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p320.

⁷⁶ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p320.

⁷⁷ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p320.

⁷⁸ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p320.

⁷⁹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p321.

⁸⁰ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p321.

- 10.31 Williams appeared before the Commission on the 4th of November 1841, Kamera and Tao gave evidence in support on the 25th of November 1841.⁸¹ The award was for 2,292 acres and given on the 24th of August 1842.⁸²
- 10.32 Again, the award was disallowed by the 1842 New Zealand Land Claims Ordinance and re-calculated and merely recorded “2,560 acres on the whole of his claims.”⁸³ Again, Fitzroy intervened and increased the award to 3,000 acres.⁸⁴

OLC 523

- 10.33 Henry Williams obtained access and use of land at Hihi from Kamera, Tao, Puku and others on the 18th of April 1836.⁸⁵ Williams paid £20 cash and goods the Commission valued at £38 6s, the claim was made for 500 acres and was forwarded on the 15th of October 1840.⁸⁶
- 10.34 Williams appeared on the 4th of November 1841, there was support from Charles Baker and William Colenso on the 10th and 16th of November respectively, as well as evidence from Kamera and Toa.⁸⁷
- 10.35 The award of 242 acres was given. But like the others, a recalculation was required by the 1841 New Zealand Land Claims Ordinance but limited by the maximum permitted grant over all of Williams claims and again Fitzroy intervened, to ensure that Williams received 500 acres.⁸⁸

OLC 524

- 10.36 Henry Williams obtained access and use of land at Pukeaira from Kamera, Tahirangi, Hapetahi, Tao and others on the 18th of April 1836.⁸⁹ Williams paid £24 in cash and goods valued at £379 and 7s by the Commission.⁹⁰ The application

⁸¹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p321.

⁸² Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p321.

⁸³ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p321.

⁸⁴ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p321.

⁸⁵ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p322.

⁸⁶ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p322.

⁸⁷ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p322.

⁸⁸ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p323.

⁸⁹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p323.

⁹⁰ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p323.

was made to the Commission for approximately 4,000 acres on the 15th of October 1840.⁹¹

- 10.37 Williams appeared on the 4th of November 1841, Charles Baker and William Colenso on the 10th and 16th of November respectively, as well as evidence from Kamera and Tahirangi.⁹² The award was for 1,813 acres.⁹³
- 10.38 Again, a recalculation was required by the 1841 New Zealand Land Claims Ordinance but was limited by the maximum permitted grant over all his claims. Again Fitzroy intervened, to ensure that Williams received 2,000 acres.⁹⁴

OLC 525

- 10.39 Henry Williams obtained access and use of land at Pakapu from Tao, Tahuahi, Haretua and others on the 15th of May 1838.⁹⁵
- 10.40 Williams paid £15 and goods valued at £89 18s by the Commission, and made the claim for 500 acres on the 15th of October 1841.⁹⁶ Williams appeared on the 4th of November 1841, support was received from Charles Baker and Haretua.⁹⁷ The award was for 420 acres.⁹⁸
- 10.41 Again, a recalculation was required by the 1841 New Zealand Land Claims Ordinance but limited by the maximum permitted grant and then Fitzroy intervened, to ensure that Williams received the full 500 acres.⁹⁹

OLC 526

- 10.42 Henry Williams obtained access and use of land at Puketona from Heke, Kamera, Tao and others on the 28th of May 1839.¹⁰⁰ Williams paid £40 cash and goods

⁹¹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p323.

⁹² Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p323.

⁹³ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p323.

⁹⁴ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p324.

⁹⁵ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p324.

⁹⁶ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p324

⁹⁷ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p324

⁹⁸ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p324

⁹⁹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p325.

¹⁰⁰ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p325.

and cattle valued at £405.4 by the Commission.¹⁰¹ The application was made for 2,000 acres on the 15th of October 1840.¹⁰²

- 10.43 Williams appeared before the Commission on the 4th of November 1841, support was received from Charles Baker, Tahirangi and Haurangi.¹⁰³ The award given was for 1,785 acres.¹⁰⁴
- 10.44 Again, a recalculation was required by the 1841 New Zealand Land Claims Ordinance but limited by the maximum permitted grant for all the claims and then Fitzroy intervened, to ensure that Williams received 2,000 acres.¹⁰⁵
- 10.45 Berghan notes that OLC 526 was surveyed and found to be 2,000 acres, a detail which was “corrected” under the Quieting Titles Ordinance, and lead to a new grant issued on 15 June 1852.¹⁰⁶ The Bell Commission did not consider this grant, it remained valid.¹⁰⁷

William Williams OLC Claims 529-534

OLC 529

- 10.46 William Williams obtained access and use of Umuhaku from Haki and Piripi Haurangi on the 15th of December 1835.¹⁰⁸ Williams paid £15 cash and goods valued by the Commission at £154 17s.¹⁰⁹ He claimed 300 acres in an application to the Commission on the 21st of November 1840.¹¹⁰
- 10.47 Williams’ agent was Edward Williams, who appeared at the hearing on the 5th of February 1842 and claimed 900 acres.¹¹¹ The claim was supported by Richard Davis who testified to the original transaction.¹¹² An award of 300 acres was made on the 8th of April 1843.¹¹³

¹⁰¹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p325.

¹⁰² Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p325.

¹⁰³ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p325.

¹⁰⁴ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p325.

¹⁰⁵ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p326.

¹⁰⁶ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p326.

¹⁰⁷ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p326.

¹⁰⁸ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p329.

¹⁰⁹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p329.

¹¹⁰ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p329.

¹¹¹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p329.

¹¹² Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p329.

¹¹³ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p330.

10.48 The order was disallowed and a recalculation was required by the 1841 New Zealand Land Claims Ordinance, however the award was amended and the new award was the same amount 300 acres, which was gazetted on the 6th of September 1843.¹¹⁴

OLC 530

10.49 William Williams obtained access and use of land at Taiamai from Hake, Piripi, Haungtangia(sic), Hopine, Matui and others on the 15th of December 1835.¹¹⁵ Williams paid £22 cash and goods valued by the Commission at £230 19s 6d.¹¹⁶

10.50 Williams' agent was Edward Williams, who appeared at the hearing on the 5th of February 1842 and claimed 400 acres.¹¹⁷

10.51 The claim was supported by Hake, Matui, Piripi and Richard Davis who testified to the original transaction.¹¹⁸ An award of 400 acres was made on the 8th of April 1843.¹¹⁹

10.52 The order was disallowed and a recalculation was required by the 1841 New Zealand Land Claims Ordinance, however the award was amended and a new award of the same amount 400 acres was made, which was awarded on the 22nd of October 1844.¹²⁰

OLC 531

10.53 William Williams obtained access and use of land at Taiamai from Kia and Hiamoe and Paora Hako on the 29th of September 1836.¹²¹ Williams paid £4 cash and goods valued by the Commission at £12 12s.¹²² Williams' agent was Edward Williams, who appeared at the hearing on the 5th of February 1842 and claimed 20 acres.¹²³

¹¹⁴ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p330.

¹¹⁵ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p330.

¹¹⁶ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p330.

¹¹⁷ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p330.

¹¹⁸ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p330.

¹¹⁹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p331.

¹²⁰ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p331.

¹²¹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p331.

¹²² Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p331.

¹²³ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p331.

- 10.54 The claim was supported by Hiamoe and William Spencer King who testified to the original transaction.¹²⁴ An award of 20 acres was made on the 8th of April 1843.¹²⁵
- 10.55 The order was disallowed and a recalculation was required by the 1841 New Zealand Land Claims Ordinance, however the award was amended and a new award of the same amount; 20 acres, was made, which was gazetted/awarded on the 22nd of October 1844.¹²⁶

OLC 532

- 10.56 William Williams obtained access and use of Taupotaka from Kaitoke and Waki on the 17th of April 1837.¹²⁷ Williams paid goods valued by the Commission at £20 12s 6d.¹²⁸ Williams' agent was Edward Williams, who appeared at the hearing on the 6th of February 1842 and claimed 20 acres.¹²⁹
- 10.57 The claim was supported by Matiu Poutu who testified to the original transaction.¹³⁰ An award of 20 acres was recommended on the 10th of November 1843.¹³¹
- 10.58 Berghan notes that there was no evidence of the recommendation being confirmed or gazetted, nonetheless a grant was issued in favour of the claimant for 20 acres.¹³²

OLC 533

- 10.59 William Williams obtained access and use of land called "Uropi, Koao and Kioneone"¹³³ from Hautungia, Rapa, Hiamoe, Ngehe and Ngari on the 31st of July 1838.¹³⁴ Williams paid £6 cash and goods valued by the Commission at £62 15s

¹²⁴ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p331.

¹²⁵ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p332.

¹²⁶ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p332.

¹²⁷ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p332.

¹²⁸ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p332.

¹²⁹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p332.

¹³⁰ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p332.

¹³¹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p332.

¹³² Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p333.

¹³³ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p333.

¹³⁴ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p333.

6d.¹³⁵ Williams' agent was Edward Williams, who appeared at the hearing on the 5th of February 1842 and claimed 100 acres.¹³⁶

10.60 The claim was supported by Hiamoe and George Clarke who testified to the original transaction.¹³⁷ An award of 100 acres was recommended on the 21st of March 1843.¹³⁸

10.61 The order was disallowed and a recalculation was required by the 1841 New Zealand Land Claims Ordinance, the award was amended and a new award, again of 100 acres, was made on the 22nd of October 1844.¹³⁹

OLC 534

10.62 William Williams obtained access and use of land at Maungaturoro from Ruka, Taka, Hotu, Hamu, Matiu, Poutu and others on the 3rd of October 1838.¹⁴⁰ Williams paid £3 4s in cash and goods valued by the Commission at £31 15s.¹⁴¹ Williams claimed 50 acres.¹⁴²

10.63 Williams' agent was Edward Williams, who appeared at the hearing on the 5th of February 1842 to present the claim.¹⁴³

10.64 The claim was supported by Hamu, Matiu and George Clarke who testified to the original transaction.¹⁴⁴ An award of 50 acres was recommended on the 4th of April 1843.¹⁴⁵

10.65 The order was disallowed and a recalculation was required by the 1841 New Zealand Land Claims Ordinance, however the award was amended and a new award of the same amount; 50 acres was made, and granted on the 22nd of October 1844.¹⁴⁶

¹³⁵ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p333.

¹³⁶ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p333.

¹³⁷ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p333.

¹³⁸ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p333.

¹³⁹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p334.

¹⁴⁰ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p334.

¹⁴¹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p334.

¹⁴² Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p334.

¹⁴³ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p334.

¹⁴⁴ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p334.

¹⁴⁵ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p334.

¹⁴⁶ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p335.

Summary of the William Williams' Claims

10.66 Berghan records that the awards amounted to 890 acres, but that the survey showed that there were in fact 1,460 acres.¹⁴⁷ Williams had also acquired 28 acres from George Clarke.¹⁴⁸ Bell considered that the usual calculations, which would have given William Williams 1,325 acres, which was less than the “original transactions”¹⁴⁹ and as a result recommended the grant be the full 1,488 acres as the land was going to be assigned to William Williams nephew Henry Williams Jr.¹⁵⁰ This grant was issued on the 2nd of March 1858.¹⁵¹

Analysis of the Henry & William Williams Old Land Claims

10.67 Whereas Berghan sets out the technical details of the transaction as they were presented before the Old Land Claims Commissions, the research by Stirling and Towers delves into the background to the transactions and presents a dramatically different picture. With this detail added to the picture it becomes clear that the land alienated by the Old Land Claims Commission to William Williams, like his brother, was contrary to the arrangement agreed between them and the hapu members they had dealt with. The resulting alienations were a clear and oppressive breach of Te Tiriti and its principles.

10.68 In assessing the background, the authors record that at the time of these transactions, the Taiamai plains around Pakaraka and Pouerua were “intensively occupied and valued by resident Māori.”¹⁵²

10.69 The gaps in the Berghan record as articulated by these authors:

“are the terms on which the Williams transactions were agreed to by Māori in the 1830s, and upheld by them through the turbulent 1840s, before being challenged in the late 1850s when the exclusive nature of the tenure sought by the Williamses (and endorsed by the Crown) finally became apparent.”¹⁵³

¹⁴⁷ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p335.

¹⁴⁸ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p335.

¹⁴⁹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p335.

¹⁵⁰ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p335.

¹⁵¹ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p335.

¹⁵² Stirling & Towers, p1521.

¹⁵³ Stirling & Towers, p1521.

10.70 There is also a lack of detail in the Berghan record relating to the reserves within the Williams claims. As Stirling and Towers point out, the account by Berghan presents the case as recorded by the files from the claims which the Old Land Claims Commission heard or received,¹⁵⁴ so it accounts for the perspective that the Commission and applicants took, but it fills in none of the other important details.

A Conditional Agreement: Sharing the Land

10.71 The technical evidence points out that there was a “conditional nature to the Williams transactions...involving sharing the land with the host Māori community.”¹⁵⁵ Williams’ first reference to the plan to acquire land at Taiamai set out that it was to be “the basis of a homestead for my children and a township for the natives.”¹⁵⁶

10.72 The statements he made before the Land Claims Commission also supported the mutual benefit, and reciprocal nature of the relationship in which the Williams family was considered a part of the hapu. The land was said to be ‘given’ and the children were considered to be part of the tribe:

*All my deeds state that the land is given to me for myself and children and the Natives have always considered them as virtually belonging to the tribe they were born amongst.*¹⁵⁷

10.73 Further to this he testified that there were:

“several buildings on this property and 150 acres enclosed and in cultivation...” and added that two of his sons had resided on the land for about four years.

10.74 Williams intention of claiming a further 10,000 acres over and above that which was being used was not apparent to the hapu at the time of the Commission processes. This land was still being occupied and used and under the control of the hapu. Williams himself wrote that Europeans were subject to the custom of

¹⁵⁴ Stirling & Towers, p1521.

¹⁵⁵ Stirling & Towers, p1522.

¹⁵⁶ Stirling & Towers, p1522.

¹⁵⁷ Wai 1040, #A39(a)Vol II, Paula Berghan, Northland Block Narratives: Old Land Claims, p320.

murū, but more importantly their tenure was still by permission of their host communities. For Te Morenga and the other rangatira they were “not so much ‘selling’ their land as acquiring the missionaries and teachers they sought.”¹⁵⁸

10.75 Williams faced opposition from Governor Grey for the amount of land that he acquired, which shows that even in the eyes of the settler government community, these actions, or their translation by Williams, were very problematic.¹⁵⁹

10.76 In rebuffing these challenges from Governor Grey, Williams arranged a “series of carefully framed questions” and recorded their answers.¹⁶⁰ When asked if they wanted the land returned to them, as Grey had stated should happen they replied:

“He teka rahoki na te Wiremu tana wahi matou na matou wahi.” [Williams’s translation: No indeed, Williams portion belongs to him and our portion belongs to us.]¹⁶¹

10.77 As the authors point out, while Williams might have considered this bolstered his claims, it also confirmed that the land was still being shared with Māori.¹⁶² At this time also as pointed out above the Williams family was only using about 150 acres of the land.

10.78 Williams had earlier emphasised the protective element of the CMS land deeds, that the Waimate CMS farm was created “for the sole benefit of the natives to show them what could be accomplished by a steady and scientific mode of agriculture” and that Māori were repeatedly invited to live on CMS land both at Waimate and around Paihia.¹⁶³

10.79 As already noted, Governor Grey was suspicious of the actions and intentions of Williams in acquiring the land, as well as the legitimacy of his claims later, Busby too had suspicions and stated that he simply did not believe that Williams was purchasing the land for himself and Māori.¹⁶⁴

¹⁵⁸ Stirling & Towers, p1522.

¹⁵⁹ Stirling & Towers, p1522.

¹⁶⁰ Stirling & Towers, p1522.

¹⁶¹ Stirling & Towers, pp1522-1523.

¹⁶² Stirling & Towers, p1523.

¹⁶³ Stirling & Towers, p1523.

¹⁶⁴ Stirling & Towers, p1523.

- 10.80 It was the view of Stirling and Towers that there may have been a difference between what Williams told his CMS superiors or local Pākehā and what he intended, and that the subsequent events, in making application for the entire areas which he had deeds for, bear out Busby's assertion more than those statements by Williams.¹⁶⁵
- 10.81 The key issue here is not Williams goodness or honesty or even intentions but the basis of the dealings with Māori. Busby's observation confirms that Māori expected to share the land with Williams, that it was not for the missionaries alone.¹⁶⁶
- 10.82 In sum, the Williams families surveyed over 11,000 acres of land and received grants to over 10,000 acres.¹⁶⁷
- 10.83 Ngare Hauata and Te Urikapana retained just one cultivation reserve of 186 acres and two small wahi tapu, but this was only an interim arrangement as Henry Williams was permitted by the Crown to acquire sole occupation of that cultivation reserve in the 1850s.¹⁶⁸

Exclusion of the Wahi Tapu: OLC 523

- 10.84 The commission recommended to the Crown in their general report that Maori areas of occupation being cultivations, fishing grounds and wahi tapu, should be reserved to Maori but for the most part failed to ascertain and describe these in any specific claim award,¹⁶⁹ or ensure whether any reserves or trusteeship arrangements agreed between Maori and Pakeha were upheld by the Crown.
- 10.85 Stirling and Towers are clear that the wahi tapu are excluded from the land in OLC 523, the reference in the deed saying "Warehuinga, Ngā Mahanga, Te Umutakiura ka kapea ki waho."¹⁷⁰ But in his evidence at the Commission Williams only referred to Te Umutakiura as being excluded and marking the boundary of

¹⁶⁵ Stirling & Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, p1523.

¹⁶⁶ Stirling & Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, p1524.

¹⁶⁷ Stirling & Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, p1524.

¹⁶⁸ Stirling & Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, p1524.

¹⁶⁹ Stirling and Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, pg. 328

¹⁷⁰ Stirling & Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, p1525.

the land sought, and managed to not include the other two wahi tapu in the land awarded.¹⁷¹

- 10.86 When the Commission considered then OLC 522 it appears they either ignored or forgot their other decision and included those other two wahi tapu Ngā Mahanga and Warehuinga in the land awarded, undoing their other decision, or at least making them irreconcilable.¹⁷² Again, the award refers to these two wahi tapu as boundaries but they are in fact included inside the block awarded.¹⁷³
- 10.87 In OLC 525, the wahi tapu Te Umutakiura is again referred to as “an old sacred place” and a boundary to the block.¹⁷⁴ The award does not exclude the wahi tapu for this claim, implying that it is included, whereas in OLC 521 and 523 it is expressed excluded from the territory of the award.¹⁷⁵
- 10.88 While there are problems with the overall awards, which render them unjustifiable with the application of Te Tiriti and its principles, the lack of attention to the awards themselves, to the extent of failing to exclude wahi tapu referred to in the deeds is a huge failure on the part of the Crown and deepens the prejudice suffered by Te Ngare Hauata and Te Urikapana.

Wahi Tapu: Motu Tapu on OLC 524

- 10.89 Williams appears to have claimed to have purchased a wahi tapu called Motu Tapu which lay on the lower Waitangi River near Te Tii, and that he had been able to obtain it with the agreement of just Te Kemara, in exchange for two spades, although there were another 26 vendors for the rest of the land in the claim.¹⁷⁶
- 10.90 This reference is made in an undated addendum to the deed,¹⁷⁷ however as the award is specific to the original boundaries it was not included in the award and remained Māori land.

¹⁷¹ Stirling & Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, p1525.

¹⁷² Stirling & Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, p1525.

¹⁷³ Stirling & Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, p1525.

¹⁷⁴ Stirling & Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, p1525.

¹⁷⁵ Stirling & Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, p1525.

¹⁷⁶ Stirling & Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, p1526.

¹⁷⁷ Stirling & Towers, “Not with the Sword but with the Pen”, Wai 1040 # A9, p1526.

Scale of the Awards: The Recalculations

- 10.91 Williams was originally awarded 7,010 acres of the 11,000 he claimed.¹⁷⁸
- 10.92 These awards were based on an expenditure based system that was a part of the 1842 New Zealand Land Claims Ordinance.¹⁷⁹
- 10.93 The 1842 Ordinance was repealed and Williams' grants were amended.¹⁸⁰ Initially the Commissions did not calculate his entitlement using the schedule in the 1841 Ordinance, and instead imposed the statutory maximum of 2,560 acres.¹⁸¹
- 10.94 Williams responded to this by saying that the claims he had made were on behalf of himself and his 11 children and that he presumed that the limit of 2,560 acres was to apply to each of the family members.¹⁸²
- 10.95 This approach was rejected by Commissions Godfrey and Richmond as a "dangerous precedent."¹⁸³
- 10.96 But Governor Fitzroy was sympathetic to the request based on the efforts of Williams in contributing to "the advancement and improvement of the aboriginal race and in fact for the general interests of the colony at large."¹⁸⁴
- 10.97 Approval was required, and granted, from Fitzroy's Executive Council, and it was noted that Williams total expenditure would have entitled Williams to some 22,131 acres, above the 11,000 that was claimed.¹⁸⁵
- 10.98 This estimate of Williams expenditure refers to the Commissions estimate of the value of the goods which Williams used for payment, which Stirling and Towers indicate had tripled in value through the Commission.¹⁸⁶

¹⁷⁸ Stirling & Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, p1526.

¹⁷⁹ Stirling & Towers, "Not with the Sword but with the Pen", Wai 1040 # A9, p1526.

¹⁸⁰ Stirling & Towers, p1526.

¹⁸¹ Stirling & Towers, p1527.

¹⁸² Stirling & Towers, p1527.

¹⁸³ Stirling & Towers, p1527.

¹⁸⁴ Stirling & Towers, p1527.

¹⁸⁵ Stirling & Towers, p1527.

¹⁸⁶ Stirling & Towers, p1527.

- 10.99 The evidence also points out the rigour of Godfrey and Richmond, who at least enforced the legislation, was undercut by Commissioner Fitzgerald who was happy to indulge Fitzroy's prejudices and extend maximum benefit to Williams.¹⁸⁷
- 10.100 It was a combination of two elements which Fitzroy used to justify an exception; the claims being for Williams and his children, and then also the character and qualifications of the Applicants (Williams and his children) as colonists.¹⁸⁸
- 10.101 Fitzroy recommended that the full amount claimed be awarded, except for Old Land Claim 524, where only 2,000 acres should be awarded rather than the claimed 4,000 acres.¹⁸⁹
- 10.102 As a result, Henry Williams was granted approximately 9,000 acres in total.¹⁹⁰ His brother was granted approximately 1,000 acres.

Surveying & Crown Title

OLC 526

- 10.103 Old Land Claim 526 yielded a Crown title for Williams of some 2,000 acres after submitting a plan and obtaining a Crown grant. The survey showed there was an extra 300 acres, which the Crown assumed as surplus land.¹⁹¹

OLC 521-523 & 525

- 10.104 Four of the other Old Land Claims, 521-523 and 525 were surveyed in 1851, the survey was not submitted until 1856, with the request that it be issued in a single grant.¹⁹²
- 10.105 The application noted that there were native reserves within the blocks.¹⁹³

¹⁸⁷ Stirling & Towers, p1527.

¹⁸⁸ Stirling & Towers, p1527.

¹⁸⁹ Stirling & Towers, p1527.

¹⁹⁰ Stirling & Towers, p1528.

¹⁹¹ Stirling & Towers, p1528.

¹⁹² Stirling & Towers, p1528.

¹⁹³ Stirling & Towers, p1528.

- 10.106 The survey showed that there were 5,227 acres, although the grant had been for 5,000 acres.¹⁹⁴ As a result of the excess, Williams received a grant of an allowance of 1/6th of the cost of the survey.¹⁹⁵
- 10.107 It is important to note that this approach to survey allowances is unheard of when it comes to Māori land, where the practice was to demand full payment for the costs of survey to confirm the land which Māori already owned, a practice universal in Te Raki as elsewhere.
- 10.108 Stirling and Towers point out that these 227 acres could have been the native reserves but Williams did not refer to this possibility.¹⁹⁶ The survey had failed to show the boundaries for the native reserves and so the survey was deficient and would have to be corrected.¹⁹⁷
- 10.109 With the need to issue a new grant the Application was referred to Attorney General Whittaker, who sought to defer any action until a new regime for settling old land claims was set in place under then proposed Land Claims Settlement Act 1856.¹⁹⁸
- 10.110 The Attorney General noted that the current system only entitled Williams to the area of his existing claims, so it would be better for him to wait until the new Act was in force, as it was “far more generous to Pākehā claimants.”¹⁹⁹
- 10.111 In this instance, we see counsel for the Crown advising Pākehā citizens to take advantage of changes to the legislation which favour them. Rather than recognising its duty to the hapu and acting in a way that protected their interests.²⁰⁰
- 10.112 Williams and his lawyer waited for the new legislation and made the application in December 1856.²⁰¹

¹⁹⁴ Stirling & Towers, p1528.

¹⁹⁵ Stirling & Towers, p1528.

¹⁹⁶ Stirling & Towers, p1528.

¹⁹⁷ Stirling & Towers, p1528.

¹⁹⁸ Stirling & Towers, p1529.

¹⁹⁹ Stirling & Towers, p1529.

²⁰⁰ Stirling & Towers, p1529.

²⁰¹ Stirling & Towers, p1529.

- 10.113 Bell heard no further evidence on the claims or the Māori reserves and made the award to Williams in 1858.²⁰²
- 10.114 Williams grants contained 6,830 acres, but he was entitled to another 1,025 acres based on the survey allowance which he had accrued.²⁰³ Williams picked up a further 210 at Puketui near Puketona and 163 acres from the Crown surplus land derived from his brother William Williams' claims.²⁰⁴
- 10.115 Even at this time local Māori continued to occupy lands at Haumi and Takuere, although it was technically Crown land (surplus land).²⁰⁵

The Reserves

- 10.116 Stirling and Tower are unequivocal that Māori had continued to live on the land which had been awarded to Williams.²⁰⁶
- 10.117 Despite this, there were no reserves referred to in the Commissioners report, in the original deed boundaries or in the evidence given to the Commission by Williams or Māori witnesses.²⁰⁷ There were the three reserves within Pakaraka, but this was a limited recognition of the hapu having ongoing rights to the land.²⁰⁸ The reserves amounted to 239 acres, just 3% of the area granted.²⁰⁹ The reserves were known as

32. Ngahikunga, occupation reserve (186 acres);
33. Ngamahanga, wahi tapu, (29 acres); and
34. Umutakiura, wahi tapu (25 acres).²¹⁰

²⁰² Stirling & Towers, p1530.

²⁰³ Stirling & Towers, p1530.

²⁰⁴ Stirling & Towers, p1530.

²⁰⁵ Stirling & Towers, p1530.

²⁰⁶ Stirling & Towers, p1531.

²⁰⁷ Stirling & Towers, p1531.

²⁰⁸ Stirling & Towers, p1531.

²⁰⁹ Stirling & Towers, p1531.

²¹⁰ Stirling & Towers, p1531.

- 10.118 Missing from this list are the two wahi tapu excluded by the Commissions awards; Tomotomokia and Te Warehuinga. Stirling and Towers were not able to find out what happened to these two wahi tapu.
- 10.119 Claimant evidence was presented which showed that at Pakaraka, there was an area that was to be set aside as a marae, alongside which there was to be a graveyard for the Māori families.²¹¹ This did not come to pass. It became a church and graveyard instead.
- 10.120 Ngahikunga was not a reserve for long, Williams indicating in 1857 he wished to purchase it. There was a transaction of £50 with Te Kemara and Te Tao²¹² which was witnessed by William Hopkins a local shopkeeper.²¹³
- 10.121 There was no evidence of why Te Tao and Te Kemara entered the transaction, and no evidence that the government inquired into this, however Williams' motives are evident from the detail of the block and how it lay in relation to his other interests.²¹⁴
- 10.122 The reserve stretched across much of the vast Pakaraka estate and severed it almost into two distinct blocks.²¹⁵
- 10.123 Adding the reserve to his estate would greatly improve the quality of the block that Williams had, and the Crown had much interest in opening up as much land as possible in the area for Pākehā settlement, so there was agreement between Williams and the Crown as to the utility of the reserve becoming Pākehā owned land.²¹⁶
- 10.124 The Pakaraka estate included Pouerua,²¹⁷ a maunga and volcanic cone of immense importance to both the hapū of the rohe and Ngāpuhi as a whole.²¹⁸ It

²¹¹ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p10.

²¹² Stirling & Towers, p1531.

²¹³ Stirling & Towers, p1532.

²¹⁴ Stirling & Towers, p1532.

²¹⁵ Stirling & Towers, p1532.

²¹⁶ Stirling & Towers, p1532.

²¹⁷ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p13.

²¹⁸ Stirling & Towers, p1533.

also included the kainga beside Owhareiti lake, the alienation of which was strongly disputed by Taiamai Māori in March 1840.²¹⁹

- 10.125 This dispute was not recorded or raised when Williams claim was before the Commission, although it is clear from the records that Taiamai Māori asserted interests in the land to north of the Owhareiti and did not consider them extinguished by Williams' transactions.²²⁰
- 10.126 The issue of the acquisition of the reserve Ngahikunga did not come up again until the Land Claims Extension Act 1858 had passed.²²¹ The benefit of delaying any application to have the transaction recognised are that the new Act allowed Māori reserves to be acquired within his claim provided the land was first ceded to the Crown and then acquired by the Claimant from the Crown for 10 shillings per acre (or £93 in total).²²²
- 10.127 Because of this delay and the new legislation Te Tao and Te Kemara, would receive, on behalf of the unidentified owners and occupants of the reserve, half the sum to be received by the Crown, which it had absolutely no interests in.²²³
- 10.128 The matter of finalising the purchase went to District Native Land Purchase Commissioner Kemp, who received the necessary £50 from Williams and executed a deed which stated Ngahikunga was sold to the Crown for £50 by vendors acting for Ngāti Rahiri. The signatories were Hake, Kawhera, Parangi, Makoare Te Tao, Te Haratua, Tareha Kamera, Henare Tiri and Hare Matenga.²²⁴
- 10.129 The purchase of the reserve was sealed by Bell in a supplementary report of May 1861 on the Williams' Claims.
- 10.130 The wahi tapu of the hapū were made vulnerable because of the old land claims process, and it demonstrates further issues with the findings of the Commission. Under no circumstances would the rangatira or the hapū alienate their own wahi tapu or remove access to their wahi tapu.

²¹⁹ Stirling & Towers, p1533.

²²⁰ Stirling & Towers, p1533.

²²¹ Stirling & Towers, p1534.

²²² Stirling & Towers, p1534.

²²³ Stirling & Towers, p1534.

²²⁴

10.131 The wahi tapu in the area included were Warehuinga, Ngā Mahanga, Te Umutakiura and Tomotomokia.²²⁵ And yet despite this the land was awarded to Williams.²²⁶

10.132 Williams only surveyed two of the wahi tapu, and so these two areas, amounting to 54 acres, are the only ones which the hapū retained.²²⁷ They were Umutakiura and Ngamahanga.²²⁸

After the Awards – Protest and Opposition

10.133 As the Berghan evidence sets out, there was with each application support presented from one of the rangatira involved.

10.134 Taken at face value this could be interpreted to indicate that the account Williams presented was accurate. In light of the protest and opposition that emerged later on, it is more reasonable to understand that this support indicated instead that those rangatira had dealt with Williams, that they preferred Williams on the land to any other Pākehā, and that the claim Williams had to the land was conditional on a number of other elements.

11.0 Issue 3: THE NORTHERN WAR, 1844–1846

Generic Claimant Closing Submissions

11.1 The claimants adopt the generic claimant closing submission on the Northern War 1844-1846²²⁹ and the Submissions in reply to Crown closing submissions on the Northern War, 1844-1846²³⁰ and further state that the Northern Wars had a profound and negative impact on the Hapū.

²²⁵ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p12.

²²⁶ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p12.

²²⁷ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p12.

²²⁸ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, received 4 September 2013, p12.

²²⁹ Wai 1040, #3.3.219

²³⁰ Wai 1040, 3.3.426, dated 15 May 2018

Summary of Key Points

11.2 The Hapū rangatira supported Kawiti and Hone Heke²³¹ during the Northern War.

11.3 Dr Grant Phillipson identifies the tribal groups whose main focus was opposition to the Crown included, Te Uri Kapana.²³² He also identifies the main leaders in opposition to the Crown being: Hautungia of Te Urikapana; Marupo, a Waitangi and Pouerua chief and Haratua, a Pakaraka chief.²³³

11.4 Claimant Wayne Stokes pointed out however that:

Our family connections meant that we had whanaunga on both sides of the conflict. My great grandfather Remana Kiwikiwi married Alice Cope, the granddaughter of Te Rangahau, daughter of renown rangatira, Taku Terewhere of Te Hikutu from Whirinaki. Alice's father James Cope, member of the 58th regiment, fought in battles at Ruapekapeka and Ohaeawai for the British.²³⁴

11.5 Tamati Pukututu is also identified as Ngare Hauata from Kawakawa and he aligned his resources with the Crown.

11.6 The hapū rohe is located right in the middle of the path between Ngawha and Otuihu and therefore any neutral position within its own rohe or attempt not to be drawn into the conflict would have been futile, the conflict was brought to them.

11.7 All Ngare Hauata and Te Uri Kapana suffered indiscriminately as a result of the war including through:

- i. the loss of life and casualties suffered.
- ii. A complete economic blockade of all shipping which caused severe economic depression for Taiamai and Bay of Islands Hapū; and
- iii. The erosion of mana and rangatiratanga and the related spiritual and psychological effects.

²³¹ Wai 1040, #H9 Amended Brief of Evidence of Wayne Stokes, 2013, p18.

²³² Wai 1040 #A001, p.357

²³³ Wai 1040 #A001, p.358

²³⁴ Wai 1040 #H009, Amended Brief of Evidence of Wayne Stokes, 2013 p.16

- 11.8 Wayne Stokes describes how after the battle at Ruapekapeka, Ngare Hauata and Te Urikapana returned to their gardens and land at Ohaeawai where they then had to bear the burden of their part in the wars, struggling to come to terms with the defeat and subsequent loss of their own authority and mana as Maori.

These feelings also arose as a result of commentary from missionaries such as Henry Williams who recorded the defeats as spiritual in nature. I have read Williams diaries in which he describes his explanations to our people as to the reasons why the Crown forces 'won'. The missionary influence was far deeper than loss of land as it also reinforced the ideals of the colonists that our traditional practices were evil, pagan and against god and I have no doubt assisted in the erosion of our culture.²³⁵

Facts and Evidence Relied On

- 11.09 In August of 1844 Te Kemara was one of the chiefs who met with Fitzroy to understand what the government required for Utu to be paid for Heke's actions.

Burrows noted that at the meeting, '[the chiefs] were anxious to know what compensation was required for the mischief done by Heke, as they were willing to do what was in their power to prevent bloodshed.²³⁶

Fitzroy apparently discussed the terms he sought from Heke: 'He is to give up ten guns and the axe with which the flagstaff was cut down.' According to Cotton, the chiefs were reassured with the governor's proposal and they noted that 'Now for the first time we are saved. An utu may be payed [sic] but had John Heke's person been demanded, very many natives would have joined him.' The chiefs understood that the governor would act in accordance with tikanga and would not demand Heke's person, but would demand an appropriate utu payment. The chiefs therefore sought to assist the governor in the hope that by assisting they helped to keep the peace.²³⁷

- 11.10 By February 1845 Marupo (who was based at Pouerua) was listed as one of the most 'disaffected chiefs' in Clarke juniors' military intelligence.²³⁸

- 11.11 After the attack on Otuihu, FitzRoy directed the forces to continue up the Kawakawa River to attack groups of Ngapuhi and Ngati Hine. He restated his

²³⁵ Wai 1040 #H009, *Amended Brief of Evidence of Wayne Stokes*, 2013 p.17

²³⁶ Ralph Johnson, Northern War 1844-1846, #A05 p.113-114

²³⁷ Ralph Johnson, Northern War 1844-1846, #A05 p.114

²³⁸ Ralph Johnson, Northern War 1844-1846, #A05 p.177

orders to Colonel Hulme on 4 May – where he stated that:

it is my sad duty to state my conviction that till the principal Pahs on the Kawakawa are destroyed, and till the majority of their rebellious inhabitants are killed, there will be no peace at the Bay of Islands, no security for other settlements.

The Pahs to which I refer are (besides Pomare's) those of Kawiti, of Hori Kingi, of Ruku, of Waikadi, and of Marupo. Besides which every canoe belonging to Rebels should be destroyed. There are many concealed near the falls of Waitangi, belonging to Heke, and his adherents.²³⁹

11.12 Marupo was present fighting with Heke at Te Kahika.²⁴⁰

11.13 At the battle of Te Kahika which occurred on the 8th of May, Ngare Hauata lost lives including the lives of rangatira.

Henry Williams included a short list of the dead which he listed as follows: 'Taura (Kawiti's second son); Kuiapo, Raewera, Puroto (all relatives); Ruku (Roroa); Pouri (nephew of Haki Taipa); Ngawhitu (chief of Ngare Hauata); Parata Koti; Heki Tapua.' George Clarke junior was not present at the battle, but he noted after the attack that 'a great number of natives have died since the battle from the wounds received. From the native accounts nearly all who were wounded will not recover.' The final death toll is not known.²⁴¹

11.14 During the battle of Te Ahuahu which did not involve Crown forces, but which was connected to the actions of the British Colonial Government, Haratua of Pakaraka was so seriously wounded in the stomach that the missionaries did not expect him to recover – although he eventually did and participated in the later defence of Ohaeawai.²⁴²

Attack on Te Haratua

11.15 The soldiers finally left Ohaeawai on 14 July. They travelled back only as far as Waimate, where they began garrisoning the small missionary settlement. But the attacks had not finished. On 16 July, a group of 200 soldiers under Despard and

²³⁹ Ralph Johnson, Northern War 1844-1846, #A05 p.244

²⁴⁰ Ralph Johnson, Northern War 1844-1846, #A05 p.249

²⁴¹ Ralph Johnson, Northern War 1844-1846, #A05 p.253

²⁴² Ralph Johnson, Northern War 1844-1846, #A05 p.290

Hulme marched through to Pakaraka to attack Haratua's pa. The inhabitants of the pa watched the soldiers approach their pa, and the last members departed the pa as the soldiers came into sight.

- 11.16 Despard reported that once again the pa possessed a large store of provisions, which the soldiers destroyed.

A very large supply of provisions of different sorts, was found in the place, the greater part of which was destroyed, or carried away, and the place itself was burned to the ground.

- 11.17 The interpreter Edward Meurant noted simply that the force returned to Waimate after 'burning and destroying all that we could.'²⁴³

Economic Effects of the War

- 11.18 Ultimately the British forces acting under orders from the government conducted a punitive campaign – attacking and destroying all pa, settlements and property that they associated with the resistance movement. This included Haratua and his people at Pakaraka, among others.²⁴⁴

- 11.19 'Mawe [Te Kahika], Kaipatiki, Otuihu, Waitangi, Pumuka's pa [at Te Whangaii], Waikare, Ohaeawae, Haratua's pa [at Pakaraka], and Kaihera'. These sustained attacks left a trail of severe social and economic impacts. Ngare Hauata and Te Uri Kapana suffered the losses of crucial food stores, and property in the middle of winter. Perhaps most damaging of all, wherever the troops attacked, Ngapuhi were forced to leave their long-established settlements and accommodation and find safety elsewhere: they were forced to disperse. The social and economic dislocation, together with the political reverberations as a result of the presence of the British military force, wrought significant damage to Ngapuhi through the middle months of 1845.²⁴⁵

- 11.20 After 1846, the Crown "simply was not interested enough in the north" to initiate land transactions and settlement.²⁴⁶ As the Generic submissions have noted,

²⁴³ Ralph Johnson, Northern War 1844-1846, #A05 p.311-312

²⁴⁴ Ralph Johnson, Northern War 1844-1846, #A05 p.315

²⁴⁵ Ralph Johnson, Northern War 1844-1846, #A05 p.314

²⁴⁶ Dr Grant Phillipson (Wai 1040, #A1) p.360

there was no 'peace dividend' and those Maori who assisted the Crown in its war were no better off than those who had fought against it.

- 11.21 As set out in the generic submission, exports from the district dropped drastically after the war; falling from £5,768 in 1844 to just £1,981 in 1846 before falling to a negligible £48 in 1851 and £43 in 1855.²⁴⁷ The Pakeha population of New Zealand doubled in the period 1849 to 1855, one- third of whom were in the Auckland province, but the north "remained largely unsettled and undeveloped."²⁴⁸
- 11.22 Because of the war the hapū lacked the economic capacity to participate in the lucrative trade that other Iwi were engaging in.

Submissions

- 11.23 It is Counsel's submission the Crown unjustifiably waged war on Ngare Hauata and Te Uri Kapana along with the other hapū involved and as a result the hapū suffered indiscriminately and needlessly not only through loss of life and property and provisions but because of the Crown's subsequent restrictions on trade and failure to encourage economic development in the North following the war.
- 11.24 It is against this economic backdrop that the Crown purchasing regime was soon to be implemented which caused further loss to Ngare Hauata and Te Urikapana.

Applicable Principles of Te Tiriti

- 11.25 In creating the above environment and failing to address the negative impacts of the war on Ngare Hauata and Te Uri Kapana despite promises by the Crown:
- a. failed to act in good faith towards Ngare Hauata and Te Uri Kapana; and;
 - b. failed to actively protect Ngare Hauata and Te Uri Kapana;
 - c. failed to ensure Ngare Hauata and Te Uri Kapana enjoyed the same rights and privileges and protections as British Subjects.

²⁴⁷ Vincent O'Malley (Wai1040 #A6) pp.87-88 and 134-135

²⁴⁸ As above, p.31

12.0 Issue 5: THE NATIVE LAND COURT, 1865–1900

12.1 The claimants adopt the Generic Claimant Closing Submissions²⁴⁹ on the Native Land Court 1865-1900 and the Submissions in reply in respect of the Native Land Court²⁵⁰ and further state:

That many parcels of hapū land were the subject of Native Land Court title investigations, awards and subsequent partitions and/or alienations.

12.2 Given the hapu lost most of its lands through Old Land Claims there were only smaller blocks put through the Native Land Court around the Ohaeawai and Oromahoe areas.

Ngare Hauata and Te Uri Kapana Lands that went through the Native Land Court Process

Upokoturuki

12.3 Upokoturuki – the plan (ML175) records it as being “The land of Taipa and Hemi Marupo” said to be sold to Henry Williams Esq. On 22 March 1866 Judge Manning awarded the 120 acre block Upokoturuki to three owners. The block was subsequently sold to Henry Williams and later transferred to Hana Ludbrook.²⁵¹ Of note is that the plan is accompanied by a note dated 23 April 1866 stating:

“This plan should stand over until the plans of land claims in the Bay of Islands District have been viewed from the South. There is no means in this affix of identifying the precise position of the land indicated, and no plan of Henry Williams’ claim with which to compare the north eastern boundary. The name of the stream forming the southern boundary should be noted on the plan. The name of the county should also be given.”²⁵²

²⁴⁹ Wai 1040, #3.3.225

²⁵⁰ Wai 1040, 3.3.424, B D Gilling / J J Lang, Submissions in reply to Crown closing submissions on Issue 5: the Native Land Court, 1865-1900, 15 May 18

²⁵¹ Berghan Vol 9 p.15

²⁵² See ML 175 p. 1

- 12.4 As the Berghan evidence sets out, there was with each application support presented from one of the rangatira involved.
- 12.5 Taken at face value this could be interpreted to indicate that the account Williams presented was accurate.

Pakonga

- 12.6 80 acre Pakonga block. On 5 December 1886, a Certificate of Title was issued for the 80-acre Pakonga block situated at Waimate. The land was awarded to four owners. The plan records the block as being of Maketu Ruhe. The file indicates that the block was subsequently sold Marsden and John Clarke, presumably at some time prior to 1900, and later transferred to H.K. Hatrick.²⁵³
- 12.7 On 28 March 1870, a Certificate of Title was issued for the 30-acre Pakonga block situated at Ohaeawai. The land was awarded to three owners. In 1872 the block was partitioned into 3 blocks and 20 acres of Pakonga A and B (Owned by a single person) were alienated by private sale in 1904. On 22 January 1982, the Pakonga C block was aggregated into the adjacent Maungaturoto block.²⁵⁴

Ngawhitu

- 12.8 The plan (ML228) depicts two different Maori settlements and Maori huts on the block and a further Maori settlement to the south east outside the block. There is also a large plantation and a large wahi tapu named Wharetangi. The plan depicts Ngararera river joining Mangamuti river at a place named Te Wahapu a nga Parera. Other named areas on the block or on its boundaries include: Matarau; Waingata; Piruru; Kourenui; Tuhiteuwira; Ihupatiki; Te peka o Whakait; Teakitunareure; Titirere; Omokai.
- 12.9 On 4 January 1867, a Certificate of Title was issued for the 1,903-acre Ngawhitu block. The land was awarded to four owners. On 9 August 1907, an Injunction

²⁵³ Berghan Vol 12, p. 394

²⁵⁴ Berghan Vol 12, p. 392-393

Order was issued to restrain any persons from cutting and removing timber over the Ngawhitu block.²⁵⁵

- 12.10 Five separate alienations occurred in the 1900's amounting to more than 1558 acres of the block. On 23 December 1974, the remaining Ngawhitu blocks – A1, C1 and C2 (being approximately 376acres) – were amalgamated into the Ngatihine Block.²⁵⁶
- 12.11 30 acres were also divided off and named Puketapu (see below and ML534)

Puketapu

- 12.12 On 4 January 1867, at a Native Land Court hearing at Pahia, Judge Fenton awarded the title of Puketapu (30 acres) situated at Ngawhitu to Hori Pou.
- 12.13 Land Court files indicate that undivided shares within the block (equating to 20a. 2r. 20p.) were sold to J. and W. Bedgood. This transfer was acknowledged in 1918. Today, Puketapu, measured now at 12.1405 ha, remains as Maori land.²⁵⁷

Horena

- 12.14 Horena was 29 acres belonging to Moko. One boundary is Ngatahuna creek. On 30 December 1867, the Native Land Court issued a Certificate of Title over the 29-acre Horena block situated at Pakaraka. The land was awarded to one owner. Little further is recorded of the block until 15 May 1962, when Horena was amalgamated into the Oromahoe block.²⁵⁸

Taumatapukapuka

- 12.15 Taumatapukapuka. 125 acres adjoining the Manowhenua block. The plan (ML 452) identifies places such as: Mataparawera; Tuoro; Te Poka a Pepene; Te Wai Horoi Toto; Ngatauhanga i Rua; Tai Mimiti; Kiki Tara.

²⁵⁵ Berghan Vol 9 p.284

²⁵⁶ Berghan Vol 9 p.285

²⁵⁷ Berghan Vol 12, p. 482

²⁵⁸ Berghan Vol 12, p. 62

12.16 On 4 July 1868, a Certificate of Title was issued for the 125-acre Taumatapukapuka block situated at Pakaraka. The land was awarded to five owners. The file indicates that the block was subsequently sold to William Busby, presumably at some time prior to 1900, and later transferred to the Public Trustee.²⁵⁹

Tokatoka

12.17 Tokatoka the plan (ML492) depicts the following places: Tahungaopuoro; Kaiwhakairi and Hauraki.

12.18 On 3 December 1867, a Certificate of Title was issued for the 19-acre Tokatoka block situated at Ohaeawai. The land was awarded to Caroline Welsh. The file indicates that the block was subsequently sold to the Public Trustee presumably at some time prior to 1900.²⁶⁰

Taimimiti

12.19 Taimimiti Block – 50 acres (ML807) records that this block has been taken from Pokatuawhenua Block as originally surveyed and a separate order for a certificate made under section 24 Native Land Act 1865. On 13 December 1867, a Certificate of Title was issued for the block. It was later subdivided in Taimimiti A and B and both blocks sold to a European in 1970.²⁶¹

Te Riu

12.20 Te Riu was a 42 acre block adjoining Te Tokatoka block at Ohaeawai. On 3 December 1868, a Certificate of Title was issued for block to two owners. Most of the Block had been alienated by 1964. In 1970 the last remaining portion of the block being 3 roods was declared European land under Part 1 of the Maori Affairs Amendment Act 1967.²⁶²

²⁵⁹ Berghan Vol 12, p. 640

²⁶⁰ Berghan Vol 12, p. 673

²⁶¹ Berghan Vol 12, p. 587-588

²⁶² Wai 1040, A39(b) Northland Block Research Narratives Vol 03 Crown Purchase Blocks 1840 - 1865s Vol III p77

Waiwhariki

- 12.21 Waiwhariki is an 868 acre block at Ohaeawai. On 28 March 1870, a Certificate of Title was issued to 8 owners. The plan (ML1533) depicts: PirihitiaWai kahikatea; Taukatamaukuku; Waiwhakatungingi; Waikareao creek; Ngatokaturua creek; Te Tira; Waiparaheka Springs (just outside the boundary of the block); Waiparaheka Creek; Te Pukoro Creek; Te Kiripaka; Kanikau Creek; Waiwhariki Creek; Tahungaopuoro; Takanga o Mohi.
- 12.22 Numerous partitions and alienations occurred. Berghan records approximately 348 acres remain as Maori land in 11 separate titles.²⁶³

Tukuwhenua

- 12.23 Tukuwhenua (adjoining the Parahirahi block) 2721 acres. Plan (ML3155) depicts subdivisions Totarapoka 830 acres. Tukuwhenua 712 acres and Otiraiti 420 acres and Kahuwera 175 acres, Rongotetaharangi 280 acres and Tawawaahi 304 acres.
- 12.24 A track to Pakaraka is marked on the Kahuwera subdivision as is the Rerepouri stream; Waikurakura creek; Whakapure river; Puwhero Creek; Wairoro Creek.

Maungaturoto (ML6589)

- 12.25 The total block area was 493.716ha, the total area which remains Maori Land is 53.736ha. Thus approximately 439.98ha has been alienated²⁶⁴

Te Pae (ML8923). Plan depicts:

- 12.26 The total block land area of was originally 288.136ha. The total Maori land remaining in Maori ownership is 7.9318ha. Thus 704.0682ha has been alienated²⁶⁵ Significant features recorded on the land included: Waikuri kaianga; House Lemon (aka Remana); Te Rewa Stream; Te Pae (Old Native Settlement);

²⁶³ Berghan Vol 12, p 780

²⁶⁴ Wai 1040, A39(d) Northland Block Research Narratives Vol 05 Crown Purchase Blocks 1840 - 1865s p255

²⁶⁵ Wai 1040, A39(f) Northland Block Research Narratives Vol 07 Crown Purchase Blocks 1840 - 1865s p10

Tunatahi; Werowero Stream; Tarawaraparore; Ratakamaru; Waionepu (old kainga); Pirikotaha; Whare; Kapa-a-Haka (old kainga); Whare and cultivations; Cleared bushland of grass and fern.

Oromahoe Block (ML8924) Plan depicts:

12.27 The block comprised 1,128 acres. It was subject to an amalgamation and a Land Development Scheme (detailed below). Significant features recorded on the land included: Taratara stream; Pukekaihou; Muta Te Waioira; Waiaruhe Stream; Kititeas house paddocks and cultivations; Patukauae stream; Haowhenua; And other settlements that are illegible.

13.0 Issue 7: TWENTIETH CENTURY ALIENATION, RETENTION, TITLING AND ADMINISTRATION OF MĀORI LAND

13.1 The claimants adopt the Generic Claimant Closing Submissions²⁶⁶ and the Submissions in reply to Crown closing submissions on Issue 7: Twentieth century alienation, retention, titling and administration of Māori land²⁶⁷ and further state that:

The Land situated at Oromahoe had a long history of occupation by hapu including Te Ngarehauata. The Oromahoe block was the subject of a papatupu committee hearing.

13.2 In 1962 some owners gave their approval for their land to be amalgamated and agreed that the Department of Lands and Surveys would administer the block. It was envisaged that once the land had been developed it could be again subdivided and made available to selected qualified owners by way of ballot. The original proposal was that the Crown would return the land put into the scheme back to owners as 7 dairy farms and 2 sheep farms.

²⁶⁶ Wai 1040, #3.3.224

²⁶⁷ Wai 1040, 3.3.433, C Terei / H Jamieson, Submissions in reply to Crown closing submissions on Issue 7: Twentieth century alienation, retention, titling and administration of Māori land, 18 May 18

- 13.3 The Oromahoe scheme had by 1970 increased to 2,569 acres. It included Oromahoe 18R (1,909 acres), E1 (4 acres), Porotu B1 (70 acres), B2 (70 acres), Te Pae B6B2 (201 acres) and Crown land of 316 acres.²⁶⁸
- 13.4 The Crown itself also became a 50% shareholder in the development scheme over this period through conversion of shares and live buying, it acquired 1,284 acres.
- 13.5 Change of title came about by:
- (i) Voluntary sale to the Crown through Section 151 of the Maori Affairs Act 1953 (live buying);
 - (ii) Sale of uneconomic shares on successions, to the Maori Trustee through Section 137 of the Maori Affairs Act 1953;
 - (iii) Acquisition of consolidated uneconomic interests by the Maori Trustee under Section 445 of the Maori Affairs Act 1953.²⁶⁹
- 13.6 The technical evidence on Te Tai Tokerau Maori land development Schemes 1930-1990 records that the Crown shareholding was purchased by the owners in 1986 for \$115,477. The cost was added to the scheme debt, to be repaid out of the profits earned on the Crown's shares. The costs for the Crown shares were discounted by 50 percent under the Farm Discounting Scheme two years later.²⁷⁰
- 13.7 The Crown closing submissions refer to the fact that all of the interests acquired by the Crown were ultimately reverted in Maori ownership.²⁷¹ This suggests that the acquiring of shares by the Crown did no harm in the end because land lost was returned. However as pointed out in the evidence of Leon Penney, those owners whose shares were purchased by the Crown are now no longer shareholder/ beneficiaries of the Trust and have therefore been fully dispossessed.²⁷²

²⁶⁸ District Officer, Department of Maori Affairs to Superintendent, Land Development Department of Lands and Survey, 19 December 1970, BBDL 1030/2507b 18/4 pt 4, ANZ Auckland [DB p. 586].

²⁶⁹ Wai 1040, AO9, p.5

²⁷⁰ Wai 1040, AO9, p.7

²⁷¹ Wai 1040, 3.3.414, p.54

²⁷² Wai 1040, AO9, p.8

- 13.8 When the Oromahoe block was amalgamated in 1962, the Maori Trustee acquired the uneconomic interests, and when there was a further amalgamation and partition in 1963, further interests were compulsorily acquired.²⁷³ The Crown commenced live buying of Oromahoe shares in 1967. Within five months, the number of owners had been reduced from 495 to 189.²⁷⁴ Therefore it can be concluded that at least 306 owners lost their shareholding in the lands.
- 13.9 The Crowns shareholding which was revested to Maori owners now benefits those remaining owners whose shares weren't purchased.
- 13.10 Further to this, the Crown shares being revested in Maori ownership now means that the Trustees have the largest single shareholding and can outvote the owner/shareholders which again exacerbates the loss of control over the whenua by owners. The evidence of Leon Penney is:

*However, the large Crown shareholding has not been ideal due to the impact this has had on voting. This has since become a burden for Trustees in that technically we can outvote a majority of the shareholders on any decision as Trustees responsible for the Putea trust shares we hold the largest single shareholding. Whilst this legal ability to outvote shareholders has never been used by the Trustees, it is technically legally available, and we see it as problematic. We operate as far as possible by consensus decision-making but if things were to change in the future this legal ability could cause some real difficulties.*²⁷⁵

- 13.11 The Crown also emphasises that the failure of the land development schemes was:
- a. more about changes in the nature of farming as reduced labour requirements meant it didn't provide the employment anticipated.²⁷⁶
 - b. the changing economies of scale being another contributing factor outside of its control for why the schemes were not successful.²⁷⁷

²⁷³ Assistant General Manager, Taitokerau Iwi Transition Agency to Palmer Macauley and Blaikie, 18 November 1991, BBDL 1030/2493b 18/25 pt 10, ANZ Auckland [DB p. 626].

²⁷⁴ Proposed Crown Conversion Schemes - data, 1967, MA 1 1/16/19, ANZ Wellington; cited in Aroha Harris, 'Maori Land Development Schemes 1945-1974 With Two Case Studies From Hokianga', MPhil Thesis, Massey University, 1996, p. 80.

²⁷⁵ Wai 1040, AO9, p.8

²⁷⁶ Wai 1040, 3.3.414, p.53

²⁷⁷ Wai 1040, 3.3.414, p.53-54

- 13.12 The Crown was aware of these factors prior to the establishing of the schemes but went ahead with its schemes anyway. In Counsel's submission, to some extent the schemes were set up to fail. Furthermore, these factors being out of Crown control does not address the fact that the schemes were a failure on many other levels also which can be directly attributable to Crown actions including:
- a. the delays in development of the land;
 - b. delays in stocking the scheme;
 - c. costs which were not planned for; and
 - d. over-capitalisation of the scheme with debt exceeding the Current Market Value.
- 13.13 As regards the delays, the initial development proposals for the scheme were discussed with the owners in 1960, but development did not begin until the 1963 to 1964 season. The area was not stocked until the 1966 to 1967 season and 'Considerable reversion is said to have taken place during the four year delay'. These delays increased the costs of development. As well as the costs of clearing and fertilising the land it was found that the boundary fencing costs were more than had first been envisaged.²⁷⁸
- 13.14 As regards the over capitalisation, in the 1980s Maori Affairs became increasingly critical about Lands and Survey approach to scheme development because of this fact. Maori Affairs view was that the owners were disadvantaged where Lands and Survey were in charge.
- 13.15 This prompted the transfer of the scheme from the Lands and Survey to Maori Affairs prior to its return to the owners. In 1988 the debt was reduced from \$945,831 to \$562,522 under the Government Debt Restructuring Scheme and in 1989 Maori Affairs made a submission to the Board of Maori Affairs for further debt write off and the release and return to the control of the owners. The scheme was eventually returned to the owners in 1990 with a debt of \$245,000.

²⁷⁸ Submission to Board of Maori Affairs, 1971, BBDL 1030/2507b 18/4 pt 4, ANZ Auckland [DB p. 579].

13.16 Once back in owner control the Farm has been managed successfully all debt was repaid within 3 years and the trust has grown its asset base to in excess of 13 million.²⁷⁹

*...we are and were more than capable of managing our own whenua successfully and that the Crown's past paternalism has been misguided. In fact, we have been running the Farm since its return, far better comparatively than the Crown ever did in the almost 30 years they had control.*²⁸⁰

13.17 It is submitted that the people of Ngare Hauata were particularly affected by the Oromahoe Land Development Scheme causing prejudice through:

- a. the loss of control,
- b. loss of access
- c. inability to use their lands from 1963 through to 1990 and
- d. a significant decrease in owner participation in the oversight of the lands.

²⁷⁹ Wai 1040, AO9, p.9

²⁸⁰ Wai 1040, AO9, p.9

14.0 Issue 8: PUBLIC WORKS AND OTHER TAKINGS

- 14.1 The claimants adopt the Generic Claimant Closing Submissions²⁸¹ and the Generic Reply submissions on Public Works Takings²⁸² and further submit:
- 14.2 That in respect of Section 40 Offer Back requirements the legislation has failed to ensure descendants of the original owners can also qualify to have the property offered back to them.
- 14.3 The Ministry of Education declared a teachers residence at Ohaeawai surplus to requirements. To circumvent the Public Works Act offer back process. The descendants of Remana Kiwikiwi were rejected as qualifying to have the land offered to them, because they were not a child of Remana Kiwikiwi as legislation required. When members of the family established their entitlement to Remana Kiwikiwi's estate so they could qualify for the offer back process Opus decided that the property could be exempted from the offer back process on the grounds of significant change. Since the Ministry of Education had erected a dwelling on the land, this constituted significant change.²⁸³
- 14.4 As a result the Whanau lost the right to have the land offered back and the land was subsequently sold.
- 14.5 Section 40 of the Public Works Act very rarely protects Maori interests in achieving the return of land that is no longer required for its intended purpose. This is a classic example of how that part of the legislation has caused prejudice to whanau of Ngare Hauata and Te Uri Kapana.

²⁸¹ Wai 1040, #3.3.217

²⁸² Wai 1040, 3.3.431, C Hockly, Submissions in reply to Crown closing submissions on Issue 8: Public works and other takings, 15 May 18

²⁸³ Wai 1040, #O21Brief of Evidence of Wayne Stokes dated 21st November 2014

15.0 Issue 10: OWNERSHIP AND MANAGEMENT OF ENVIRONMENTAL, WATER AND OTHER NON-LAND RESOURCES

15.1 The claimants adopt the Generic Claimant Closing Submissions²⁸⁴ and the Submissions in reply to Crown closing submissions on Issue 10: Ownership and management of environmental, water and other non-land resources.²⁸⁵

Okura

15.2 Okura is a traditional fishing settlement of Ngare Hauata, located on the south side of the Kerikeri Inlet. The route travelled by the hapu from inland kainga to the coast is recorded as being from along the banks of the Waiaruhe river to Puketona Pa on the Waitangi river, then over a saddle to the north to Okura. This same route was used by Marsden when he travelled inland to Taiamai in 1819.

15.3 Kemp records in a letter to the CMS dated 27 February 1825 that the Ngare Hauata:

“tribe was as powerful and respectable as his [Hongi] and their lands more extensive...they had the same right to the harbor where the ships anchored and the shore where the boats landed”

Ngare Hauata share interests at Okura with Ngati Rangi and today the settlement is deserted but located on the north west part of the Waitangi State Forest.

15.4 Ngare Hauata also have fishing rights on the eastern side of Lake Omapere.²⁸⁶

²⁸⁴ Wai 1040, #3.3.227

²⁸⁵ Wai 1040, 3.3.434

²⁸⁶ Dorothy Ulrich Cloher, *Hongi Hika Warrior Chief* 2003, p.89

16.0 Issue 11: TAKUTAI MOANA/FORESHORE AND SEABED

16.1 The claimants adopt the generic closing submissions on the Takutai Moana and Foreshore and Seabed²⁸⁷ and the Submissions in reply to Crown closing submissions on Issue 11: Takutai moana/foreshore and seabed²⁸⁸ and specifically submit that:

16.1.1 Ngare Hauata and Te Uri Kapana have direct interests in the foreshore and seabed in the Kerikeri Inlet and Pewhairangai Harbour.

17.0 Issue 12: SOCIO-ECONOMIC ISSUES

17.1 The claimants adopt the Generic Claimant Closing Submissions²⁸⁹ and the Submissions in reply to Crown closing submissions on Issue 13: Socio-economic issues.²⁹⁰

17.2 In respect of Housing, Ngare Hauata and Te Uri Kapana families were directly affected in that Oromahoe was identified by the government in 1955 as being a depressed housing area.

17.3 22 houses were identified as being required to meet the need of the families living at Oromahoe and 13 of these were identified as being urgent.²⁹¹ Oromahoe residents were encouraged to move away from their land into areas where they were closer to employment. The Crown had specifically stated that Oromahoe families should not be encouraged to build and continue to occupy their land.

“Oromahoe contained 188 people in 29 families. While some houses were good or fair, thirteen of the houses were in very poor condition. Souter stated: “it seems clear that an endeavour will have to be made to move some of the families away from that area. We certainly should not embark on any housing programme at Oromahoe”²⁹²

²⁸⁷ Wai 1040, #3.3.229

²⁸⁸ Wai 1040, 3.3.459

²⁸⁹ Wai 1040, #3.3.212, #3.3.214, #3.3.215, #3.3.216

²⁹⁰ Wai 1040, 3.3.428

²⁹¹ Wai 1040, # A038, Walzl 20th Century Overview report, p.730

²⁹² Wai 1040, # A038, Walzl 20th Century Overview report, p.729

17.4 This coupled with the Oromahoe Land Development Scheme contributed immensely to the separation and dislocation of Ngare Hauata and Te Uri kapana peoples from their lands.

18.0 Issue 14: TE REO MĀORI, WĀHI TAPU, TAONGA AND TIKANGA

Generic Claimant Closing Submissions²⁹³

18.1 The claimants adopt the generic closing submissions on Te Reo Māori, Wāhi Tapu, Taonga and Tikanga and refer the Tribunal to the specific claimant evidence that was presented to this Tribunal on a number of important wahi tapu sites.

19.0 General Prejudice Caused

19.1 It is submitted that have been prejudicially affected in all or any of the following respects:

- i. Loss of their lands, mountains, forests, rivers, swamps and lakes and harbour;
- ii. Loss of tino rangatiratanga;
- iii. Loss of the mana of hapū and Iwi;
- iv. Loss of life;
- v. Loss of leaders;
- vi. Loss of sources of food and building materials;
- vii. Loss of economic independence and prosperity;
- viii. Loss of water rights, mineral rights and geothermal rights;
- ix. Damage and destruction of the social structure and organisation of whanau, hapū and Iwi;
- x. Destruction of the traditional system of ownership (customary title) and possession of land and resources;
- xi. The classification of some as rebels or tangata hara and, as a consequence, adverse presumptions of guilt against them and their

²⁹³ Wai 1040, #3.3.221

- whanau and hapū by relevant Crown officials, Courts and agents and by other Iwi;
- xii. Loss of the mana of leaders through their loss of control of the lands, loss of authority and denial of tino rangatiratanga and as a consequence the breakdown of the leadership systems of the hapu;
 - xiii. Loss of political influence;
 - xiv. A feeling of shame and spiritual deprivation;
 - xv. The arousal of division, dissension and conflict between hapū leading and
 - xvi. Denial of their right of Self Government and the right to develop and enforce their own laws in accordance with the tikanga of the Ngare Hauata and Te Uri Kapana

20.0 Findings and Recommendations Sought

20.1 The claimants seek:

- a) A finding that the claim is well founded;
- b) A finding that Ngare Hauata and Te Uri Kapana hold mana whenua and mana moana over their ancestral lands and waters;
- c) A specific finding that Ngare Hauata and Te Uri Kapana have specific and direct mana whenua rights in the land on which the Waitangi State Forest is located including where the hapu coastal kainga of Okura was located in the North West corner.
- d) A finding that Ngare Hauata and Te Uri Kapana are landless.
- e) A recommendation that the Crown return all Ngare Hauata and Te Uri Kapana lands retained in its ownership to a Ngare Hauata and Te Uri Kapana nominated entity;
- f) A recommendation that the Ohaeawai School site held in the land bank be transferred to Ngare Hauata and Te Uri Kapana ownership;

- g) A recommendation for the reimbursement of the \$245,000 debt that the owners of Oromahoe Farm took on when their lands were returned to them after the failed Oromahoe Development Scheme be paid to the Farm Trust with interest.
- h) A recommendation that Ngare Hauata and Te Uri Kapana hapū be recognised as a legal entities in their own right;
- i) Compensation for losses of lands, economic opportunity, and wellbeing of the whanau of Ngare Hauata and Te Uri Kapana as a result of Crown breaches of Te Tiriti;
- j) A recommendation that Ngare Hauata and Te Uri Kapana are accorded representation in all Crown entities, agencies, and departments that operate in and around the Taiamai and Pewhairangi Taiwhenua and the Pewhairangi Harbour in recognition of Ngare Hauata and Te Uri Kapana as tangata whenua and ahi kaa;
- k) A recommendation that the Crown acknowledge the need for, and will support amendments to, environmental legislation including the Resource Management Act 1991, and, local government legislation including the Local Government Act 2002 to properly reflect territorial authority obligations in respect of Te Tiriti o Waitangi;
- l) A recommendation that the Harbour be returned to the legitimate hapū claimants' and that any central and Local Government interests in the harbour be negotiated with those hapū owners following its return and thus returning the hapū to a position of power in the future use and management to be agreed.
- m) A recommendation that the Crown acknowledge a compensation figure specifically for the enduring dismantling of Hapū society by the Crown through its institutions of law, education, health, and other mechanisms.
- n) Any other findings and recommendations that the Tribunal deems necessary.

21.0 Concluding Statement

21.1 Put plainly and succinctly is the statement of Wayne Stokes:

It is clear to us that our tupuna never intended that we would be denied our lands and our way of life.

Dated at **KERIKERI** this 16th day of August 2018

A handwritten signature in black ink, appearing to read 'Moana Tuwhare', with a large, sweeping flourish at the end.

Moana Tuwhare
Counsel Acting