

Te Roroa Claim

Appendix 01 The Claim

1.1 The Claim

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The first formal intimation of the claim was in a letter of 10 November 1986 from Alex and Manos Nathan on behalf of their father, E D Nathan JP, asking the Waitangi Tribunal to investigate the improper sale of the Maunganui block to the Crown in 1876 and the failure to make proper native reserves, contrary to the principles of the Treaty of Waitangi (A1(a)). This letter was followed by an additional statement of claim, 15 April 1987, from E D Nathan and ten others on behalf of the descendants of the chiefs, Parore Te Awha and Tiopira Kinaki to such lands which they had lost by acts and omissions of the Crown, namely Manuwhetai and Whangaiariki (A1(b)).

On 26 January 1988, a further claim was submitted by Ropata Parore concerning a portion of the Taharoa block granted to his grandfather, Parore Te Awha (A1(c)). This claim was reformulated in a letter of 10 November 1988 (A1(d)).

These claims concerned the terms of sale of the Maunganui block and, for purposes of inquiry, research and hearing, were combined and extended into a statement of claim of 15 December 1988. This was from Alex and Manos Nathan and others in the matter of Waipoua Forest, E D Nathan (now deceased), Turo (Lovey) Te Rore and others in the matter of the Maunganui block and Ropata Parore in the matter of Taharoa lands and lakes (A1(e)).

On 1 February 1989, the secretary of the Waimamaku Maori Komiti, Mabel Paniora, lodged a further related claim in a letter of intent. It concerned Maori reserves, burial grounds, wahi tapu and taonga and was made on behalf of Te Roroa of Ngati Whatua, also the hapu of Ngati Korokoro, Ngati Wharara, Pouka, and Ngati Pou of Nga Puhi (A1(f)).

Shortly before the first hearing commenced, the Waimamaku claim was consolidated with the Waipoua, Maunganui and Taharoa claim into a statement of claim, 5 May 1989, under four main heads (A1(g)). The claimants specifically reserved the right to seek leave to amend it or to provide further particulars. In the course of hearings, one particular claim concerning Opanake (A1(g)3(ii)) was dropped but without prejudice to the rights of claimants to submit a separate claim at a later date. Working copy of the finally amended statement of claim was filed before the eighth hearing. It is this last statement of claim which is reproduced below.

BEFORE THE WAITANGITRIBUNAL Te Roroa Claim - WAI 38

(Incorporating PC 71, PC 30, PC 138 and PC 182)

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

AND

IN THE MATTER of Claims to the Waitangi Tribunal by E.D. NATHAN (now deceased) and TURORO RANIERA (LOVEY) TE RORE and others for themselves and on behalf of the descendants of the Rangatira Parore Te Awha, Tiopira Kinaki and Te Rore Taoho and on behalf of the Te Roroa Hapu of Kaihu in the matter of the Maunganui Block

AND MANOS NATHAN and ALEX NATHAN and others for themselves and on behalf of Te Roroa o Waipoua, of which they are members, in the matter of the Waipoua Blocks and Forest

AND ROPATA PARORE for himself and on behalf of the descendants of the Rangatira Parore Te Awha and on behalf of the Hapu of Kaihu in the matter of the Taharoa lands, lakes and surrounds

AND EMILY PANIORA for herself and for the Waimamaku Maori Komiti on behalf of nga hapu o Waimamaku in the matter of the Kaharau Reserve and certain Wahi Tapu and Taonga and other reserves in the Waimamaku Valley and surrounds

FOURTH STATEMENT OF CLAIMS

DATED THE 17th DAY OF Sept 1990

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1. RECITALS

WHEREAS We, the abovenamed claimants being members of Te Roroa, have filed claims with the Waitangi Tribunal dated 22 April 1987, 10 November 1986, 2 February 1988, 1 February 1989 and 15 June 1989 respectively which concern related grievances of Te Roroa and others under the Treaty of Waitangi against the Crown and which claims have been subsequently consolidated for enquiry, research and hearing by the Waitangi Tribunal;

AND WHEREAS we desire to amend and to provide further particulars of our claims in substitution for the amended statement of claim filed herein;

NOW THEREFORE WE CLAIM under the Treaty of Waitangi Act 1975 and its amendments that we are Maori and that we and Te Roroa and others have been and are prejudicially affected by the various ordinances, acts, regulations, orders, proclamations, notices and other laws and by the various policies, practices and omissions by or on behalf of the Crown which were or are inconsistent with the terms and principles of the Treaty of Waitangi as particularised below.

2. DEFINITIONS

Principles of the Treaty of Waitangi

2.1 In this Statement of Claim, unless the context otherwise requires, the following principles of the Treaty of Waitangi are defined:

"Active protection" means the Crown's duty, in accordance with the Preamble and Articles II and III of the Treaty, to recognise and actively protect the Maori interests specified in the Treaty including:

a) The duty to ensure that tangata whenua always retain a sufficient share of their resources for their sustenance and prosperity and that tangata whenua be provided with the means to exploit such resources in a manner consistent with their own cultural preferences; and

b) The duty to protect Te Roroa's physical, cultural and spiritual heritage including wahi tapu and other taonga.

"Fiduciary duty" means the duty of the Crown, created by its undertakings to tangata whenua as expressed in the Treaty and founded upon the consent of tangata whenua, to act for the benefit of tangata whenua in all matters connected with or arising out of its undertakings, and, without limiting the generality of the above, includes the following duties:

- a) Active protection;
- b) Honour of the Crown;
- c) Remedy of past breaches;
- d) Sharp practices;
- e) Utmost good faith;
- f) Tribal endowment.

"Honour of the Crown" means the principle that all transactions by or on behalf of the Crown with tangata whenua uphold and assert the honour of the Crown.

"Non-Derogation" means the principle that all the principles of the Treaty expressed herein do not detract from one another and the operation of any principle cannot limit, restrict or prejudice the operation of any other principle.

"Remedy of past breaches" means the principle that, in accordance with the guarantees in Article II of the Treaty, where grievances under the Treaty are established by tangata whenua the Crown is required to take positive steps to remedy those breaches.

"Sharp practices" means the principle that in all its dealings with tangata whenua, the Crown take no unfair advantage including avoiding the use, or any suggestion of the use, of duress, unconscionable dealing, undue influence, improper pressure, exploitation of inequality of bargaining power, inadequacy of consideration in any transaction between the Crown and tangata whenua, exploitation of the needs and desires of tangata whenua leading to grievous impairment of bargaining power on their part and further that the Crown ensure in all its dealings that tangata whenua receive informed and independent advice.

"Tino Rangatiratanga" means the principle that, in accordance with mana atua, mana tupuna and mana whenua, tangata whenua are entitled to possess, manage and control all their own taonga (including whenua and wahi tapu) in accordance with their own cultural preferences and customs including the right of tangata whenua to have the communal title to their lands, forests, fisheries, wahi tapu and all other taonga expressly recognised and protected by the Crown.

"Treaty Process" means the duty of the Crown to procure the express and informed consent of tangata whenua in respect of any interference contemplated by or on behalf of the Crown in the rights and privileges of tangata whenua protected by the Treaty.

"Tribal endowment" means the Crown's duty, reciprocal to its right of pre-emption under Article II of the Treaty, to ensure that tangata whenua always retain a sufficient endowment of their tribal estate for their foreseen needs and that in any case the Crown scrupulously protect those areas settled and cultivated by tangata whenua.

"Utmost good faith" means the principle that the parties to the Treaty act towards each other reasonably and in utmost good faith.

2.2 In this statement of claim:

2.2.1 All particulars of heads of claim are provided without prejudice to the generality of the heads of claim and all heads of claim are without prejudice to all other heads of claim;

2.2.2 "Nga hapu o Waimamaku" and, in the Waimamaku sections of the statement of claim, "tangata whenua" includes Te Roroa, Ngaitu, Ngati Pou, Ngati Ue, Ngati Te Ra and Ngati Korokoro.

3. HEADS OF CLAIM

CLAIMS, under the Treaty of Waitangi Act 1975 and amendments, that we, the claimants and Te Roroa of which we are members and others, are prejudicially affected by the following which have diminished the mana of Te Roroa and caused us and, over the generations, Te Roroa, pain, suffering and humiliation.

3.1 MAUNGANUI

3.1.1 The Purchase of the Maunganui Block

The various acts, policies and omissions by or on behalf of the Crown that promoted and resulted in the purchase by the Crown of the Maunganui Block in 1876, which purchase led to the loss of the reserves of Manuwhetai and Whangaiariki and the sacred mountain known as Maunganui Bluff, and directly contributed to the subsequent loss of the Waipoua Native Reserve and other surrounding areas of Te Roroa Ngati Whatua land.

3.1.2 Failure to Protect Manuwhetai and Whangaiariki

The omission of the Crown in failing to ensure that those wahi tapu known as Manuwhetai and Whangaiariki be reserved, in perpetuity, to Te Roroa and the further failure to recognise the tino rangatiratanga of Te Roroa Ngati Whatua over those wahi tapu and to actively and adequately protect them.

3.1.3 Failure to Protect Other Wahi Tapu in Maunganui

The omission of the Crown to adequately and actively protect those places (eg. Papaki and Puketapu) in the Maunganui Block (other than Manuwhetai and Whangaiariki) regarded by Te Roroa Ngati Whatua as wahi tapu and the further omission to recognise the tino rangatiratanga of Te Roroa Ngati Whatua over those places.

3.1.4 Diversion of the Waihopai River

The omission of the Crown in failing to take reasonable steps to prevent the diversion of the Waihopai River so that a fresh water supply is no longer available adjacent to Manuwhetai for the use of Te Roroa Ngati Whatua and to the detriment of Te Roroa Ngati Whatua's traditional tuna fishery in the River.

3.1.5 Failure to protect traditional fisheries at Maunganui Beach

The omission of the Crown and its agents to actively protect Te Roroa traditional fisheries at Maunganui Beach and in particular the failure to prevent motor vehicles from using the beach to the detriment of the traditional fishery there.

3.2 WAIPOUA

3.2.1 Failure to pay fair price for Waipoua No. 1

The omission of the Crown in failing to pay a fair price for Waipoua No. 1.

3.2.2 Failure to recognise equality of interest

The omission of the Crown in failing to give practical effect to the equality of interest of the Rangatira Parore Te Awha and Tiopira Kinaki in the Maunganui and Waipoua No. 1 Blocks.

3.2.3 Failure to recognise traditional resource rights

The omission of the Crown to recognise and protect traditional resource gathering and hunting rights in the Waipoua Kauri Forest.

3.2.4 Failure to recognise special relationship with Waipoua Kauri Forest

The omission of the Crown to recognise and give effect to the special relationship of Te Roroa with the Waipoua Kauri Forest in spiritual, cultural and historical terms.

3.2.5 Failure to protect the Waipoua Native Reserve

The omission of the Crown to ensure that all the area of land defined by our tupuna, Tiopira Kinaki, in 1876 and subsequently known as the Waipoua Native Reserve or Waipoua No. 2 Block be reserved, in perpetuity, to Te Roroa as a papakainga for the Iwi.

3.2.6 Failure to Protect Wahitapu in Waipoua

The omission of the Crown to actively and adequately protect those places in and around the land regarded by Te Roroa as wahi tapu, and the further omission to recognise the tino rangatiratanga of Te Roroa in respect of its physical and spiritual heritage in Waipoua.

3.2.7 Failure to recognise Te Roroa Tino Rangatiratanga over the Waipoua River

The omission of the Crown to recognise the tino rangatiratanga of Te Roroa over the Waipoua River and to ensure that the bed of the Waipoua River remain vested in Te Roroa as an integral part of the ancestral estate of the Iwi.

3.2.8 Failure to provide services to Te Roroa in the Waipoua Valley

The omission of the Crown to provide adequate public services and utilities to Te Roroa in the Waipoua Valley.

3.2.9 Failure to Provide Legal Access to the Waipoua Settlement

The omission of the Crown to provide legal and practical access to the Waipoua settlement and to Te Roroa wahi tapu within the Waipoua Native Reserve and Waipoua No. 1 Block.

3.2.10 Failure to Protect Koutu and Kawerua

The omission of the Crown to reserve to Te Roroa the whole of the area known as Kawerua (including that area known as Koutu) in view of its significance as:

- i) A wahi tapu of particular spiritual importance to tangata whenua;
- ii) A place having particular economic and cultural significance as a kaimoana resource;
- iii) A hapu estate.

3.3 TAHAROA

3.3.1 Failure to protect the Taharoa Native Reserve

The omission of the Crown or its agents to ensure that the area of 250 acres bordering and including part of Lake Kai Iwi defined by our tupuna Parore Te Awha in 1875 and 1876 and subsequently known as the Taharoa Native Reserve be reserved, in

perpetuity, to the descendants of Parore Te Awha as wahi tapu, papakainga and mahinga kai for tangata whenua.

3.3.2 Failure to protect Wahi Tapu in Taharoa

The omission of the Crown or its agents to actively and adequately protect those places in and around the Taharoa Native Reserve regarded by tangata whenua as wahi tapu and the further omission to recognise the tino rangatiratanga of tangata whenua in respect of its physical and spiritual heritage in Taharoa.

3.3.3 Failure to protect Maori traditional fisheries in Taharoa

The omission of the Crown or its agents to actively protect Maori interests in their traditional fisheries in and around the Taharoa Native Reserve, which fisheries continue to be utilised by tangata whenua to this day.

3.4 WAIMAMAKU

3.4.1 Failure to protect Kaharau

The omission of the Crown to ensure as agreed that the full area of 2,500 acres more or less as defined as by our tupuna in 1874-1875 and known as Kaharau, which contains many wahi tapu of great spiritual significance to tangata whenua be reserved, in its entirety and in perpetuity to nga hapu o Waimamaku as wahi tapu, papakainga and mahinga kai.

3.4.2 Subsequent failure to protect Wahi Tapu in Kaharau

Without prejudice to the Head of Claim 3.4.1 above, the omission of the Crown in failing to actively and adequately protect as required by tangata whenua all those places regarded by tangata whenua as wahi tapu within Kaharau, including those wahi tapu referred to above, once those wahi tapu had passed out of tangata whenua ownership and control and the further failure of the Crown to recognise and uphold the tino rangatiratanga and mana of nga hapu o Waimamaku over those wahi tapu.

3.4.3 Failure to protect Wahi Tapu outside Kaharau

The omission of the Crown to adequately and actively protect as required by tangata whenua those places in the Waimamaku region (other than those included in Kaharau) regarded by tangata whenua as wahi tapu including all of Kaiparaheka, Te Pure and Whangaparaoa, and the further failure of the Crown to recognise and uphold the tino rangatiratanga and mana of nga hapu o Waimamaku over those wahi tapu.

3.4.4 Desecration of Taonga

The acts or omissions of the Crown that have resulted in the continuing desecration of taonga of nga hapu o Waimamaku, including wakatupapaku, which were placed by our tupuna at Piwakawaka and Kohekohe (the "Waimamaku taonga") including:

- a) Participating in the looting of Kohekohe by Pakeha in the early part of this century;
- b) Purchasing further Waimamaku taonga from private parties either
 - i) in the knowledge that the vendor(s) did not have the right to sell the taonga, or
 - ii) failing to take reasonable steps to ascertain whether the vendor(s) had such right;

- c) Refusing or failing to ensure the return of the Waimamaku taonga to nga hapu o Waimamaku;
- d) Allowing the taonga to be dealt with, or dealing with the taonga, in a manner utterly inconsistent with the tapu of those things and repugnant to the mana of nga hapu o Waimamaku;
- e) Failing to punish in accordance with the wishes of nga hapu o Waimamaku all those individuals who participated in any way in the desecration of the Waimamaku taonga; and
- f) The other matters particularised in the First Schedule hereto;

all of which acts or omissions were in gross disregard of basic human sensibilities and the tapu with which those taonga are imbued and have caused much pain, suffering and humiliation to nga hapu o Waimamaku over the generations.

3.4.5 Failure to reserve all of the Wairau wahi tapu

The omission of the Crown to ensure as agreed that all of that area of land known to nga hapu o Waimamaku as the Wairau wahi tapu be reserved in perpetuity, as a wahi tapu.

3.4.6 Failure to protect Maori traditional fishery at Waimamaku

The omission of the Crown to actively and adequately protect the Maori traditional fishery at Waimamaku including the fresh water and coastal fisheries there to the detriment of all traditional users of that fishery.

3.4.7 Desecration of Koiwi

The acts or omissions of the Crown that have resulted in the desecration of the koiwi of our tupuna, including those koiwi interred at Piwakawaka, Kohekohe, Te Moho, Te Pure and other urupa, which acts or omissions were in gross disregard of basic human sensibilities and the tapu of those koiwi, an affront to the mana of nga hapu o Waimamaku and have caused much pain, suffering and humiliation to nga hapu o Waimamaku over the generations.

3.4.8 Failure to Reserve Te Taraire wahi tapu

The omission of the Crown to ensure that the full area of 60 acres more or less as defined by our tupuna in 1874-1875 and known to nga hapu o Waimamaku as Te Taraire wahi tapu be reserved, in perpetuity, as a wahi tapu.

AND, for the avoidance of doubt, we claim to the fullest extent rights to surface and sub-surface minerals guaranteed by the Treaty of Waitangi in respect of all Te Roroa ancestral land and we claim to the fullest extent rights to fisheries guaranteed by the Treaty of Waitangi in relation to lakes, inland waterways, the shore line, the in-shore fisheries and the off-shore fisheries within or adjacent to all Te Roroa ancestral land on behalf of all traditional users of those places and fisheries;

AND, for the further avoidance of doubt we note that this statement of claim does not specify any particular relief claimed in respect of any of the breaches of the Treaty of Waitangi set out therein as such claims to relief will be the subject of a separate

hearing by the Waitangi Tribunal and will be particularised in memoranda to be filed at that time;

NOW THEREFORE we ask the Waitangi Tribunal to continue to assist us with the necessary research into historical and legal issues raised by these claims so that these issues and the relief sought may be presented in an orderly fashion at hearings before the Tribunal AND we ask the Waitangi Tribunal to make findings of fact and recommendations as to future action which in the opinion of the Tribunal should be undertaken by the Crown and other persons so as to recognise our rights under the Treaty of Waitangi and to recognise our mana tangata, mana wairua and mana whenua.

DATED at Auckland this 17th day of Sept 1990.

SIGNED for and on behalf of the)
claimants whose signatures appear)
in the Statement of Claim dated 15)
December 1988 by their duly)
appointed Counsel:

J.V. Williams

THIS statement of claim is filed by JOSEPH VICTOR WILLIAMS, Counsel for the claimants, whose address for service is at the offices of Kensington Swan, 22 Fanshawe Street, Auckland 1.

FIRST SCHEDULE

Particulars of Heads of Claim

Without prejudice to the generality of the foregoing Heads of Claim and in particular, we the claimants Te Roroa of which we are members and others have been prejudicially affected by the following ordinances, Acts, regulations, orders, proclamations, notices and other statutory instruments, policies and practices, acts and omissions by or on behalf of the Crown:

3.1 MAUNGANUI

3.1.1 The Purchase of the Maunganui Block

a) The various practices, acts and omissions on behalf of the Crown of the Native Land Purchase Officers and their agents or employees in promoting and orchestrating the purchase of the Maunganui Block in 1876 and in particular:

i) The payment of tamana of £620 to Te Roroa prior to the sale, survey and determination of the ownership of the Block by the Native Land Court; and

ii) The omission of the Crown to negotiate from the outset with the Rangatira Parore Te Awha and Te Rore Taoho, which failure violated the guarantee of rangatiratanga in Article 2 of the Treaty.

- b) The omission of the Crown to ensure that the mana and rangatiratanga of Te Rore Taoho was upheld on, and reflected in, the terms of the sale;
- c) The omission of the Crown in ensuring that the Block was fully and correctly surveyed prior to sale and in particular:
- i) The Crown's omission to ensure an approved and properly surveyed plan of the Block (including its interior boundaries) was before the Native Land Court on the hearing of the Crown's application;
 - ii) The utilisation by the Crown or its agents of a compiled plan ML 3253 in the Deed of Sale, which plan failed to show the reserves of Manuwhetai and Whangaiariki and which subsequently resulted in the Crown claiming ownership of those reserves; and
 - iii) The Crown's omission in failing to obtain all necessary consents from Tangata Whenua to the complete survey of the Maunganui Block.
- d) The acts of the Crown or its agents in having Tiopira Kinaki sign an uncompleted Deed of Sale;
- e) The confirmation of the sale by the Native Land Court prior to the production of an approved survey map;
- f) The Crown's omission to pay Tiopira Kinaki and Parore Te Awha an equal share of the sale price;
- g) The Crown's omission to properly enquire into the manner of the purchase and/or act upon recommendations or requests for remedial action despite the numerous petitions and protests of tangata whenua post-sale and in particular:
- i) The omission of Crown agencies to co-operate fully with the 1876 Inquiry into Alleged Improper Sale of Land North of Auckland.
 - ii) The Crown's omission to implement any of the findings and recommendations of the Stout-Ngata Commission in 1908 which Commission reported to Parliament that both Manuwhetai and Whangaiariki were native reserves and recommended they be reserved for permanent Maori use under the Native Lands Settlement Act 1907; and
 - iii) The Crown's omission to implement the 1939 decision of Judge F.O.V. Acheson upon the petitions of L.W. & J. Parore.
- h) The Crown's promotion of, reliance upon and enforcement of the provisions of the Native Land Acts and other statutes, ordinances and laws relating to Maori land in order to facilitate and complete the alienation of the Maunganui Block including:
- i) Native Land Act 1865;
 - ii) Native Land Act 1867;
 - iii) Native Land Act 1873;
 - iv) Immigration & Public Works Acts 1870 and 1873 (and their amendments).

3.1.2 Failure to Protect Manuwhetai and Whangaiariki

- a) The Crown's violation of the terms of sale of the Maunganui Block in 1876 as agreed between the Crown's agents on the one hand and Tiopira Kinaki and Parore Te Awha on the other which terms stipulated the reservation of Manuwhetai and Whangaiariki;
- b) The Crown's omission to ensure that the correct boundaries of Manuwhetai and Whangaiariki were noted on the Deed of Sale and were confirmed by the Native Land Court;
- c) The Crown's subsequent alienation of Manuwhetai and Whangaiariki to private purchasers to the prejudice of the Te Roroa claim to those reserves;
- d) The Crown's omission to actively and adequately protect urupa and the Pa Patenga on Manuwhetai and Whangaiariki after the loss of those areas to Te Roroa; and
- e) The Crown's omission to implement the findings and recommendations of the Stout-Ngata Commission in 1908 as already referred to in 3.1.1(g)(ii) above;
- f) The action of the Crown in prosecuting Paewiko Anania for trespass upon Manuwhetai.
- g) The Crown's omission to implement the 1939 decision of Judge F.O.V. Acheson as already referred to 3.1.1(g)(iii) above;
- h) The Crown's omission to enforce the provisions of s.23(3) of the Native Purposes Act 1938 in that while the petition of L.W. Parore was pending certain areas of Manuwhetai were subdivided for sale.
- i) The Crown's omission in failing to adequately and actively enforce the provisions of the Antiquities Act 1975 and Historic Places Act 1980 (and its statutory predecessors) in order to protect archaeological and traditional sites within Manuwhetai, Whangaiariki and adjacent areas (including Puketapu), to prevent the removal of taonga from swamp areas and to ensure the swift return to tangata whenua of any taonga found in these areas;
- j) The Crown's omission to provide access for Te Roroa Ngati Whatua to their wahi tapu in the Maunganui Block.

3.1.3 Failure to Protect Other Wahi Tapu in Maunganui

- a) The construction by the Crown or its agents of a radar station on or near the site of a whare wananga on Maunganui Bluff and the subsequent installation of telecommunications equipment there, both developments being without the consent or permission of Te Roroa Ngati Whatua and which developments have desecrated the wahi tapu there; and

b) The creation by the Hobson County Council of a public scenic reserve on Maunganui Bluff by which all people have unrestricted access to Te Roroa Ngati Whatua wahi tapu.

c) The omission of the Crown in failing to enforce the provisions of the Historic Places Act 1980 in order to protect the Hoods Road and Puketapu Pa from modification or destruction by private landowners and developers.

3.1.4 Diversion of the Waihopai River

a) The Waihopai River is a traditional tuna fishery of great renown, which fishery has been maintained until recent times;

b) The diversion has had a serious detrimental effect on the tuna fishery in the river to the extent that few tuna can be caught there now.

3.2 WAIPOUA

3.2.1 Failure to pay a fair price for Waipoua No. 1

a) The action of the Crown in treating growing timber on Waipoua No. 1 as having passed on sale when -

i) The price paid was too low to reasonably include growing timber;

ii) The map ML 3277 made no reference to timber;

iii) The deed of sale in English made no express reference to timber;

iv) The deed of sale in Maori made reference only to the land passing;

v) Oral tradition among Te Roroa is that the trees were not sold.

3.2.2 Failure to recognise equality of interest

a) The omission of the Crown in failing to pay to Tiopira Kinaki an amount equal to that paid to Parore Te Awha on the sale of the Maunganui and Waipoua No. 1 Blocks (and granting Parore Te Awha the reserve known as Taharoa without making a comparable grant to Tiopira or otherwise adjusting the price paid to Tiopira).

3.2.3 Failure to recognise traditional resource rights

a) The action of the Crown in prosecuting for trespass and the taking of protected birds, tangata whenua engaged in traditional resource gathering activities in the Waipoua Kauri Forest.

b) The enactment of laws prohibiting the hunting of pigeon and other native birds.

c) The omission of the Crown in failing to implement laws and policies to protect and enhance the rights of Te Roroa to gather or procure traditional resources in the Waipoua Kauri Forest including:

i) the hunting of pigeon and other indigenous bird life for food and feathers;

ii) the taking of native timber and Kauri gum for traditional purposes;

iii) the collection of forest plant life for traditional food, medicinal, decorative or other cultural purposes.

3.2.4 Failure to recognise special relationship with Waipoua Kauri Forest

a) The omission of the Crown in failing to formally require Te Roroa membership on the Waipoua Forest Sanctuary Advisory Committee established pursuant to the Waipoua Forest Sanctuary Advisory Committee Regulations 1952.

b) The omission of the Crown through its agents NZ Forest Service, Forest Corporation (Timberlands) and the Department of Conservation in failing to formally involve Te Roroa in the administration and management of the Waipoua Forest Sanctuary and Kauri management area.

c) The proposal to establish a regionally based Northland Kauri National Park (which will include the Waipoua Kauri Forest) in a manner which will further distance Te Roroa from involvement in the administration and management of the Waipoua Forest.

3.2.5 Failure to Protect the Waipoua Native Reserve

a) The omission of the Crown to give effect to the intention of Tiopira Kinaki known to the Crown in 1876 that the Waipoua Native Reserve be reserved, in perpetuity, as a Papakainga for Te Roroa.

b) The omission of the Crown in consistently failing to recognise and give legal effect to the communal tribal ownership of the Waipoua Native Reserve.

c) The omission of the Crown to ensure that the Waipoua Native Reserve was fully and correctly surveyed prior to sale and in particular:

i) The act of the Crown in employing the surveyor Wilson who had a history of being involved with unapproved plans;

ii) The act of the Crown in utilising Wilson's unapproved plan ML 3277A for the boundaries of the Reserve as set out in the Crown's compiled in office plan ML 3277;

iii) The act of the Crown and the Native Land Court in utilising plan ML 3277 in 1876 which plan is inaccurate and fails to correctly record the boundaries of the Reserve including that it fails to correctly record the traditional boundary markers of the Reserve and, in particular, the north-eastern boundary of the Reserve is some 40

chains short of the Wahi Tapu Puketurehu which is both a natural and traditional marker.

iv) The act of the Crown and the Native Land Court in utilising plan ML 3277 when Crown agents doubted whether it correctly stated the boundaries of the Waipoua Native Reserve and when Weetman's check survey plan ML 3435 completed before commencement of the Native Land Court's investigation into the customary title of Maunganui and Waipoua Blocks embodied a north-eastern boundary of the Reserve which was at variance with ML 3277.

d) The Crown's promotion of, reliance upon and enforcement of the provisions of the Native Land Acts and other statutes, ordinances and laws relating to Maori land in order to facilitate and complete the substantial alienation of the Waipoua Native Reserve including:

- i) Native Land Acts 1862, 1865 and 1873 and all amendments;
- ii) Maori Real Estate Management Act 1867;
- iii) Native Land Act 1909 and amendments;
- iv) Immigration and Public Works Acts 1870 and 1873;
- v) Immigration and Public Works Amendment Act 1871;
- vi) Native Reserves Act 1873;
- vii) Historic Places Act 1980 (and its statutory predecessors);
- viii) Forest and Rural Fires Act 1977;
- ix) Forests Act 1949;
- x) Public Works Act 1981;
- xi) State-Owned Enterprises Act 1986;
- xii) Legislation relating to the Rating of Maori Land;
- xiii) Maori Affairs Act 1931, 1953 and their amendments;
- xiv) Antiquities Act 1975 (and its statutory predecessors).

e) The Crown's omission to implement any of the findings and recommendations of the Stout-Ngata Commission which sat at Pakanae in 1908, investigated the Waipoua Native Reserve and subsequently recommended that:

- i) Of Block 2B3A, 100 acres on which were two houses and 10 acres of clearing be reserved for the owners, the balance to be leased;
- ii) Of Block 2B3B, 350 acres be reserved to the owners and the balance leased;
- iii) All of Block 2B3C be leased;
- iv) Of Block 2B3D, 400 acres be reserved for the owners, the balance be leased;
- v) Of Block 2B3E, 100 acres adjoining the Waipoua River be reserved to the owners, the balance be leased;
- vi) All of Block 2B2B3 be leased;
- vii) All of Block 2A1 be leased;
- viii) Of Block 2A2, 400 acres be reserved for the owners with the balance made available for general settlement;
- ix) Of Block 2A3 400 acres be reserved for the owners with the balance made available for general settlement.

f) The policies of the Crown that resulted in the vigorous acquisition of the bulk of the Waipoua Native Reserve by the Crown or by private owners, which policies are reflected in the legislation referred to at 3.2.5(d) and include:

i) The 1870's Immigration and Public Works programme of the Minister of the Crown, Sir Julius Vogel, that promoted and resulted in a huge upsurge in Pakeha settlement of New Zealand during the 1870's and subsequently, which settlement placed enormous pressure on Maori land holdings then remaining including the Waipoua Native Reserve;

ii) The policy of privatisation and individualisation of Maori traditional land holdings under the auspices of the Native and Maori Land Courts for the purpose of facilitating the alienation of Maori Land to non-Maori interests (including the Crown) notwithstanding the agreement between the Crown and Te Roroa on the sale of the Waipoua 1 and Maunganui Blocks that the Waipoua Native Reserve be held as an inalienable Hapu Estate, which arrangement was later confirmed by the 1876 order of ownership of the Reserve issued by the Native Land Court.

iii) The Crown policy expressed in the 1916 Report on the demarcation and management of the Waipoua Kauri Forest, also known as the Hutchins Report, that such of the Waipoua Native Reserve then in Maori hands, including urupa, be acquired for forestry purposes;

iv) The Crown policy of vigorous acquisition of Maori land in the Waipoua Native Reserve in the period following the publication of the Hutchins Report for forestry purposes and/or to protect the Waipoua Kauri Forest from alleged fire and trespassing risks.

g) The policy and acts of the Crown and its agents in establishing and maintaining the Waipoua Exotic Forest on a significant portion of the Waipoua Native Reserve which forest, among other things, poses a serious fire risk to the lives and property of tangata whenua.

h) The policy and acts of the Crown in transferring much of its landholdings in the Waipoua Native Reserve (including land, trees growing thereon and cut timber), to state-owned enterprises under the State-Owned Enterprises Act 1986 and the further proposal of the Crown to transfer to third parties timber cutting rights to trees growing on parts of the Waipoua Native Reserve, all of which policies have been to the detriment of Te Roroa.

i) The practices, acts and omissions by or on behalf of the Crown in implementing the policies referred to in 3.2.5(f) above and in promoting and orchestrating the progressive alienation of substantially all of the Waipoua Native Reserve to the Crown and private owners and in particular:

i) The vesting of the title to the Waipoua Native Reserve absolutely in 10 named owners by the Native Land Court in 1876;

ii) The charging of a survey lien against the Waipoua Native Reserve for Wilsons' unapproved plan 3277A which plan was never certified as correct by the surveyors

and which charge was contrary to the Crown's agreement with Te Roroa on the sale of the Waipoua 1 and Maunganui Blocks that the Reserve be free of survey costs;

iii) The subsequent partitioning and progressive fragmentation of Maori land holdings in the Waipoua Native Reserve under the auspices of the Native and Maori Land Courts and the Native and Maori Land Boards at below fair open market prices for the purpose of facilitating the alienation of the land and which eventually made those holdings still in Maori ownership uneconomic and susceptible to alienation;

iv) The confirmation of alienations to the Crown or private third parties by the Native and Maori Land Courts;

v) The employment of professional land purchase agents by the Crown;

vi) The payment of tamana contrary to the provisions of the Native Land Acts;

vii) The failure to pay fair open market prices for the land purchased by the Crown and in particular:

A. the utilisation by the Crown of special or roll valuations that were outdated and well below fair open market values and that, contrary to the provisions of the Valuation of Land Act, generally did not reflect the value of improvements and growing timber on the land;

B. the fixing by the Crown of low values for the land that reflected the Crown's own failure to provide proper access and adequate services to tangata whenua in the Waipoua Native Reserve and that reflected the prohibition against private alienations issued by the Crown against the land;

C. the failure of the Crown to pay for kauri timber growing on Blocks 2B3A, 2B3D, 2B3E and 2B3B purchased by it;

D. the fixing by the Crown of low values for the land in the expectation that it may be necessary for the Crown to take the land under the Public Works Act.

viii) The acts of the Crown in 1906 in applying to have land in the Reserve, in particular Blocks 2A1, 2A2, 2A3, 2B1, 2B2 and 2B3, awarded to it in lieu of unpaid survey liens;

ix) The confiscation of Block 2B2A for unpaid survey liens under the Public Works Act or the Forests Act and the threat of such confiscation made in respect of Blocks 2B2B4 and 2B3E and the practice of deducting survey charges on the sale of each Block thereby further reducing the already unfair price paid by the Crown for those Blocks;

x) The threat of forced sales of land, in particular Blocks 2A1B and other 2A Blocks, for unpaid rates even though Te Roroa derived no benefit from the rates so charged;

- xi) The manipulation of valuations to unjustly and illegally deprive Maori owners of their land, homes and gardens on Blocks 2B3A and 2B3D in the Waipoua Native Reserve;
- xii) The breach by the Crown of its agreement with Enoka Te Rore the remaining owner of 2B3A Block and Pohe and Aramaera, the owners of 2B3D, that they retain certain areas of their land adjoining the Waipoua River as their papakainga on the sale of the remainder of their land to the Crown;
- xiii) The practice of the Crown agents in increasing prices offered for land to place further pressure on the whanau who did not want to sell the 2B3B and 2B3E Blocks;
- xiv) The creation by the Crown of an extremely complex institutionalised system of Maori land ownership that is completely contrary to Maori traditional concepts of land and was conceived for the purpose of facilitating rapid alienation to Crown or settlers.
- xv) The omission of the Crown to protect wahi tapu on the land purchased by it including the wahi tapu Whangamoā, Kiwinui, Te Karamea, Matatina and Takapu Tohora on 2B3A; Kaitieke, Wairarapa, Omanakau, Opatonga, Papatia, Te Kopae, Pawherowai and Kopikopiko on 2B3B; Haohaonui, Waiarara, Te Uoro, Waingata, on 2B3C; Whenuahou, Te Kauri, Whetumakurukuru and Takauere on 2B3D; Wharemangemange, Rangitarere and Puketaka on 2B3E, Te Riu, Muriwai and Te Karu on 2B2B3;
- xvi) The acts of the Crown in promulgating and enforcing a series of Orders in Council from 1917 to 1973 which precluded the sale of land in the Waipoua Native Reserve to anyone other than the Crown and which legally prevented internal hapu gifts and exchanges and which permitted the Crown to utilise its right of pre-emption in a predatory manner in order to facilitate the alienation of the Waipoua Native Reserve to the Crown;
- xvii) The compromises effected in the late 1930's in respect of Block 2B3B1 which left only some 139 acres for the sustenance of the Yakas family out of an original block of 317 acres, the balance being taken by the Crown and in respect of Block 2B3A which abrogated the original agreement between the Crown and Enoka Te Rore that he retain a further approximately 133 acres from sale and in respect of Block 2B3D which abrogated the original agreement between the Crown and Pohe and Aramaera Paniora that they retain approximately a further 157 acres from sale, thus leading to the descendants of Enoka, Pohe and Aramaera having insufficient land at Waipoua for their needs, and the manner of the compromises in particular the omission of the Crown to ensure tangata whenua received independent legal advice on their rights;
- xviii) The continued purchases at gross undervalues by the Crown of Blocks 2B3A1B, 2B3B1B and 2B3C1 between 1960 and 1973 when it was clear that the Crown held ample land in the area for forestry purposes yet Te Roroa was suffering from a grievous land shortage;

xix) The acts of the Crown in designating pursuant to the Maori Affairs Amendment Act 1967 Blocks 2B2B2, 2B3C3 and 2B3D2A2B1 as General land, thus removing any protective role the Maori Land Court could exercise with respect to those Blocks and consequently promoting assimilationist policies of the Crown.

xx) The acts of the Maori Trustee on behalf of the Crown in consenting to the sale of Blocks 2B2B3 and 2B3C in respect of the shares in those Blocks owned by minor children, which acts resulted in those minors being disinherited from their share of their ancestral Papakainga.

xxi) The refusals of the Crown to permit Te Roroa to ameliorate the hapu's grievous land shortage by purchasing from the Crown certain areas of the Waipoua Native Reserve earlier acquired by the Crown.

j) The omission of the Crown to protect the landholdings of Te Roroa in the Waipoua Native Reserve at Waikara and to prevent alienations of that land to private interests so that today the bulk of the land there is in non-Maori ownership and Te Roroa is bereft of land essential to its survival and prosperity and in particular:

i) The imposition of substantial survey and rate liens against Blocks 2A1A, 2A2, 2A3A and 2A3B that placed pressure on the Maori owners of those Blocks to sell them in order to satisfy the liens;

ii) The omission of the Crown to ensure that the vendors of part Block 2A2, Blocks 2A1C, 2A1A, 2A2, 2A3A, 2A3B, 2B2B4, 2B2B5, 2B2B6 and part Block 2A1D received the fair open market value for their land from the private purchasers of it;

iii) The omission of the Crown to utilise its right of pre-emption in Article 2 of the Treaty in a manner to ensure that those whanau of Te Roroa living at Waikara always retained a sufficient endowment of Te Roroa's tribal estate for their foreseen needs and the act of the Crown in 1918 in waiving its right of pre-emption in respect of Block 2A1A to permit the sale of the outstanding one-sixth share held by a minor, Hune Te Rore, in that Block to Mr L.B. Marriner;

iv) The disinheritance of the Tane children in respect of part Block 2A1D, the transfer of which in 1919 was not consented to by those minor children, no Trustee for them having been appointed;

v) The actions of the Maori Land Board on behalf of the Crown in confirming the alienations to private third parties of the Waikara Blocks at below fair open market value;

vi) The acts of the Crown in compulsorily taking, without adequate compensation parts of Blocks 2A1B, 2A1C and 2A1D for public road and extending the Waikara Road to the coast, which acts put pressure on Te Roroa kaimoana and Wahi Tapu at Waikara;

vii) The omissions of the Crown in ensuring that Maori obtained a fair price for Kauri alienated on Blocks 2A2 and 2A3.

3.2.6 Failure to Protect Wahitapu in Waipoua

Whangamoia

- a) The desecration of burial caves in and around the Whangamoia reserve by the Forest Service on behalf of the Crown through discing and pine planting;
- b) The Crown's omission to provide a full 80 acre reserve at Whangamoia as requested by tangata whenua in order to include all burial caves within the reserve area;
- c) The actions of the Crown in trespassing upon and planting in pine the lesser area of 22 acres that was actually reserved so that the area was effectively reduced to 10 acres;

Waiarara and Haohaonui

- d) The omission of the Crown in failing to set aside 55 acres at Waiarara as a Wahitapu reserve;
- e) The omission of the Forest Service on behalf of the Crown to set aside these areas as urupa reserves and to implement agreements reached with tangata whenua as to protection of burial sites;
- f) The actions of the Forest Service on behalf of the Crown in logging, bulldozing and replanting pines in and around the burial places at Waiarara and Haohaonui;
- g) The failure of the Forest Service on behalf of the Crown to implement internal recommendations made in 1980 as to the protection of Haohaonui following disturbance by bulldozers;
- h) The actions of the Crown in forcing tangata whenua to exhume the sacred remains of their tupuna Rongomai from Haohaonui for removal to a safer place;
- i) The actions of the Crown in purchasing Block 2B3C including the ancient track of Te Roroa to Haohaonui and the coast, without ensuring Te Roroa retain access to Haohaonui, and planting that track in pines to discourage its further use by Te Roroa.

Waingata and Te Uoro

- j) Forestry development on behalf of the Crown of the area surrounding the sacred Waingata and Te Uoro Lakes leading to their despoilation and desecration and causing the drying up of Te Uoro Lake;

Other Wahitapu

- k) Acts by or on behalf of the Crown in forestry development resulting in the partial or complete destruction through logging, bulldozing, planting, burning, discing or excavation of the following Wahitapu:

Kaitieke
Kiwinui
Koterere
Omanakau
Opatonga
Owetenga
Pahinui
Pakiri
Piritaha
Pukenuiorongo
Papatia
ParemataRTakauere
Tuhirangi
Wairarapa
Whenuahou Track
Whetumakurukuru
Kopikopiko
Marokaraka
Matatina (including Matatinawhero and Matatinamanga)
Muriwai
Oneroa
Patata
Puketaka
Rangitarere
Taniwhanui
Takapu Tohora
Te Karu
Te Karamea
Te Kauri
Te Riu
Waiotane
Whawhanunui
Pawherowai
Wharemangemange
Patata
Maunganui
Takapu
Okohiotu
Te Kopae
Tekateka
Whangamoia

l) The omission of the Crown in certain cases (including those of Tuhirangi and Paremata) to obtain appropriate authorities under the Historic Places legislation before proceeding to modify or destroy Wahitapu.

m) The actions of the Historic Places Trust in granting authorities for modification and/or destruction of Wahitapu, excluding Te Kopae, without reference to Te Roroa;

Te Roroa-Waipoua Archaeology Advisory Committee

- n) The omission of the Crown to meet its undertakings to Te Roroa and others as to the constitution of the Te Roroa Waipoua Archaeology Advisory Committee as a formal trust;
- o) The omission of the Crown to meet its undertakings to Te Roroa and others as to establishment of the proposed Waipoua Traditional/Historic Reserve as a reserve under Section 439, Maori Affairs Act 1953;
- p) The omission of the Crown to meet its undertakings to Te Roroa and others to vest wahi tapu site administration and management in Waipoua in the Te Roroa Waipoua Archaeology Advisory Committee;
- q) The omission of the Crown to meet its undertakings to Te Roroa and others as to completion of the Waipoua Archaeological Project;
- r) The omission of the Crown to provide adequate resources to carry out management protection, preservation, restoration and presentation of Te Roroa Wahitapu.

Site Register

- s) The omission of the Historic Places Trust on behalf of the Crown to consult with Te Roroa before recording Pahinui Urupa, Pahinui Marae, Whangamoā, Takauere and Haohaonui on the archaeological site register;
- t) The omission and/or refusal by the Historic Places Trust despite repeated Te Roroa requests, to remove those sites from the Register so as to avoid giving public notice of their existence;

Archaeological Policies

- u) The omission of the Department of Conservation and the Historic Places Trust both on behalf of the Crown to establish and state a formal archaeology policy as to the implementation of the terms and principles of the Treaty of Waitangi in their archaeological work in Waipoua;
- v) The omission of the Department of Conservation and the Historic Places Trust to implement systems of accountability to Te Roroa in their respective archaeological practices so as to ensure that wahi tapu site protection and management would not be compromised by personal and/or professional differences between archaeologists involved;
- w) The omission of the Crown to ensure that, in the administration and protection of wahi tapu sites in Waipoua, tikanga Maori should prevail;
- x) The omission of the Crown to ensure, in the administration and protection of sites, Te Roroa control of its physical and spiritual heritage.

National Laws, Institutions and Policies

y) The failure to establish laws, institutions, policies and practices at a national level capable of protecting and enhancing the tino rangatiratanga of Te Roroa in respect of their wahi tapu.

3.2.7 Failure to Recognise Te Roroa Tino Rangatiratanga over the Waipoua River

a) The acts of the Crown or its agents in removing gravel from the Waipoua River without the consent of, or payment to, Te Roroa leading to changes in the River's flow and water quality and having resulting adverse effects on Te Roroa;

b) The acts of the Crown or its agents in removing gravel from land owned by tangata whenua without obtaining or seeking to obtain tangata whenua consent;

c) The acts of the Crown or its agents in gaining access to shingle quarries referred to in (a) and (b) above across tangata whenua land without obtaining or seeking to obtain tangata whenua consent; and

d) The acts of the Crown or its agents in polluting the Waipoua River with human and other waste whereby the health of Te Roroa and the traditional fishery in the River have been adversely affected;

3.2.8 Failure to Provide Services to Te Roroa in the Waipoua Valley

a) The omission of the Crown or its agents to provide Te Roroa with basic electricity, water, sewerage, telephone and mail services in the Waipoua Valley to the extent and in accordance with the preferences of Te Roroa;

b) The omission of the Crown or its agents to provide adequate educational and health services to Te Roroa in the Waipoua Valley until the 1940's including requiring Te Roroa to provide a school site out of their meagre land remnants which failures placed further undue pressure on members of Te Roroa to alienate their land to the Crown or private parties; and

c) The continuing failure of the Crown since the closure of the Waipoua Native School in 1949, to provide any or any adequate educational and health services to Te Roroa in the Waipoua Valley.

3.2.9 Failure to Provide Legal Access to the Waipoua Settlement

a) The omission of the Crown and its agents to provide legal and practical access to the Waipoua settlement and to Te Roroa wahi tapu within the Waipoua Native Reserve and Waipoua 1 and surrounding lands, necessitating the construction of a road linking the settlement with Forest Service roadways by Te Roroa at the iwi's own expense;

b) The omission of the Crown or the relevant local authority or State Agency to properly maintain and upkeep all roads over and through the Waipoua Native Reserve utilised by Te Roroa;

c) The rating of Maori land in the Waipoua Native Reserve by relevant local authorities despite the failure of those authorities or the Crown to provide practical and legal access to the Waipoua settlement and wahi tapu.

d) The acts of the Forest Service and other Crown agencies on behalf of the Crown in locking gates over Forest Service roads in the Waipoua Native Reserve thereby denying access by tangata whenua to the settlement and the Kawerua fishery.

3.2.10 Failure to Protect Koutu and Kawerua

a) The omission of the Crown in failing to ensure that tangata whenua enjoyed and continue to enjoy unrestricted and uninterrupted access to their wahi tapu and fishing grounds at Kawerua;

b) The omission of the Crown in failing to ensure that the Te Roroa reserve known as Koutu and located at Kawerua be reserved in perpetuity to Te Roroa and in particular:

i) The Crown's omission to ensure that title to the full reserve area of 30 acres incorporating the traditional boundaries of Koutu which include urupa was reserved to Te Roroa;

ii) The Crown's further omission to ensure that the approximately 4 acre area which was in fact reserved, maintained the original boundaries as surveyed by Campbell, and remained under the unrestricted control of Te Roroa;

iii) The Crown's omission to provide legal mechanisms capable of recognising Te Roroa tribal title to the Koutu reserve;

iv) The action of the Crown in 1887 in compulsorily taking without compensation, under Section 96 Native Land Act 1886, 28 perches of the Koutu Reserve for roading purposes; and

v) The act of the Crown in designating a 30 metre coastal strip of Te Koutu Reserve as Crown land without the knowledge or consent of Te Roroa.

c) The omission of the Crown in failing to actively protect the Te Roroa fishery at Kawerua by preventing over-exploitation of the fishery by non-Te Roroa members.

3.3 TAHAROA

3.3.1 Failure to Protect the Taharoa Native Reserve

a) The entire Kai Iwi Lake system, including the Taharoa Native Reserve, is a wahi tapu and mahinga kai of great renown being a traditional fishery providing tuna, inanga and kawai;

b) The omission of the Crown to give effect to Parore's intention that the Taharoa Native Reserve be inalienable by sale or long-term lease and be retained by tangata whenua forever;

c) The omission of the Crown to observe and enforce the terms of the Deed of Sale of the Maunganui Block which provided that the Taharoa Native Reserve be made inalienable except by lease for a term not exceeding 21 years;

d) The issue in 1881 by the Crown of a Crown Grant to Parore Te Awha for the Taharoa Native Reserve that permitted the alienation of the Reserve by sale or by mortgage or by long term lease with the consent of the Governor, which Grant was contrary to Parore's expressed intention and to the terms of the said Deed of Sale;

e) The violation by the Crown or its agents of Section 5 of the Volunteers and Other Lands Act 1877 which empowered the Governor to reserve Maori land "accordingly in [the] manner required by the ... natives";

f) The subsequent removal by the Crown of all restrictions on alienation contained in the Crown Grant of the Taharoa Native Reserve;

g) The purchase by the Crown in 1952 of the Taharoa Native Reserve from Parore's successors and the manner of such purchase, in particular the fact that the law required the consent only of a bare majority of owners to the sale by all;

h) The dedication by the Crown in 1962 of the Taharoa Native Reserve and surrounds as a public recreation reserve under the administration of the Taharoa Domain Board without giving proper regard to the interests of tangata whenua in the Taharoa Native Reserve and wahi tapu therein;

i) The Crown's omission to ensure that the administration of the Taharoa Native Reserve by the Domain Board be consistent with the terms and principles of the Treaty and in particular:

i) The omission of the Crown or its agents to ensure that the descendants of Parore were and are appropriately consulted by the Board and the Kaipara District Council in the management of the Taharoa Domain;

ii) The omission of the Crown or its agents to provide in the Taharoa Domain Management Plan an appropriate role for tangata whenua in the management of the Domain in accordance with the principles and terms of the Treaty, to adequately protect wahi tapu in the Domain, to actively protect and foster the traditional Maori fishery there, and to recognise tangata whenua tino rangatiratanga over such wahi tapu and fishery;

j) The encouragement by the Hobson County Council and the Kaipara District Council of production forestry around the Domain with consequent adverse effects on the quality of the waters, the traditional fisheries within the lakes and the protection of wahi tapu;

k) The omission by the Crown or its agents to include Shag Lake, which lake and surrounding land is presently owned and controlled by the Crown or its agents and which is part of the Kai Iwi lake system and the water source for Whangaiariki, in the Domain.

3.3.2 Failure to Protect Wahi Tapu in Taharoa

- a) The claimants repeat paragraph 3.3.1 hereof (including all particulars);
- b) The Taharoa Native Reserve contains a pa site overlooking Lake Kai Iwi and there are also at least two urupa in the vicinity of the Taharoa Domain one of which is known as Ngakiriparauri, which the Crown has omitted to protect or to ensure that tangata whenua tino rangatiratanga over those areas is recognised and, in particular, the Crown or its agents have planted pines on one of the urupa and have established a camping ground and boat launching ramp on one of the urupa.

3.3.3 Failure to Protect Maori Traditional Fisheries in Taharoa

- a) The omission by the Crown or its agents to recognise tangata whenua tino rangatiratanga over the said traditional fishery;
- b) The omission by the Crown or its agents to reserve to tangata whenua the Taharoa Native Reserve as essential access to the said fisheries and the further failure to ensure that tangata whenua retained unimpeded access to their traditional fisheries after 1952;
- c) The introduction by the Crown or its agents of exotic fish species such as trout into the lake systems to the detriment of indigenous fish species;
- d) The omission by the Crown or its agents to control power boating on the lakes, fertiliser and pesticide run-offs from surrounding farms and pollution and littering from campers using the Domain and the act of the Crown or its agents in granting grazing leases over part of the Domain, all to the further detriment of the traditional fishery;
- e) The imposition on tangata whenua by the Crown or its agents of the requirement to obtain fishing permits contrary to the Treaty guarantees of protection of traditional fisheries.

3.4 WAIMAMAKU

3.4.1 Failure to Protect Kaharau

- a) The act of the Crown in violating the terms of sale of the Waimamaku No. 2 Block in 1875 as agreed between the Crown's agents and our tupuna that stipulated the reservation to nga hapu o Waimamaku of all of Kaharau and the Te Taraire and Wairau wahi tapu;
- b) The Crown's omission to ensure that the correct boundaries of Kaharau were noted on the Deed of Sale and Memorial of Ownership of Waimamaku No. 2 Block and were duly confirmed by the Native Land Court and in particular:
 - i) The Crown's omission to ensure an approved and properly surveyed plan of Kaharau was before the Native Land Court on the hearing of the Crown's application in respect of Waimamaku No. 2 Block on 19 June 1875;

ii) The utilisation by the Crown of Kensington's compiled plan ML 3278A in the Deed of Sale which plan failed to show the reserve of Kaharau in its entirety and which subsequently resulted in the Crown and private persons claiming ownership of part of Kaharau.

c) The expropriation by the Crown without compensation or payment to nga hapu o Waimamaku of that part of Kaharau that was not reserved from the sale contrary to the terms of sale.

d) The Crown's subsequent alienation of that part of Kaharau to private purchasers to the prejudice of the claim of nga hapu o Waimamaku to the return of all of Kaharau.

e) The charging of a survey lien of £162.10.8 against Waimamaku No. 2 Block for Wilsons' unapproved plan ML 3278.

f) The omission of the Crown in permitting the desecration of wahi tapu at Piwakawaka and Kohekohe by removing wakatupapaku and koiwi from those places in violation of the tapu on those taonga, contrary to the wishes of nga hapu o Waimamaku and/or contrary to the law.

g) The Crown's omission to grant any of the various petitions or requests made from time to time by Hapakuku Moetara, Ngakuru Pana, Ihaka Pana, Peneti Pana, Rewiri Tiopira, Heremaia Kauere, Iehu Moetara, Wiremu Ngakuru, Charles Bryers, Mary Bryers, Ruepena Tuoro, Matene Naera, Hoani Iraia, Piipi Cummins and more than one hundred others that Kaharau or wahi tapu on Kaharau be returned to nga hapu o Waimamaku.

h) The Crown's omission to implement the findings and recommendations in respect of Kaharau made by Judge Acheson in 1932 and the act of the Crown in implementing the contrary decision of Chief Judge Jones.

3.4.2 Subsequent failure to protect Wahi Tapu in

Kaharau
Te Moho
Kohekohe
Piwakawaka
Kukutaepa
Te Rere-a-pouto

a) Without prejudice to Head of Claim 3.4.1 and its particulars, the omission of the Crown to ensure that all the Wahi Tapu listed above that are within Kaharau be reserved from the sale of the Waimamaku No. 2 Block in 1875 and the subsequent alienation of these Wahi Tapu to private purchasers to the further prejudice of nga hapu o Waimamaku.

b) The further and consequent omission of the Crown to recognise the tino rangatiratanga and mana of nga hapu o Waimamaku over all those Wahi Tapu.

c) The general omission of the Crown to adequately and actively protect all those Wahi Tapu in accordance with the wishes of nga hapu o Waimamaku and, in particular, the omission of the Crown to adequately and actively enforce the provisions of the Historic Places Act 1980 (and its statutory predecessors), to protect archaeological and traditional sites on Kaharau.

Te Moho

d) The recent proposal of the Crown to exchange Te Moho for other Crown land in the area for the purpose of using Te Moho as a public picnic area contrary to the wishes of nga hapu o Waimamaku and the tapu on that place.

Kohekohe and Piwakawaka

e) The omission of the Crown to actively and absolutely protect Kohekohe and Piwakawaka and to prevent the desecration of those places by private individuals.

f) The act of the Crown by its agents, in desecrating Kohekohe by removing Wakatupapaku and koiwi from that place in violation of the tapu on those taonga and contrary to the law and the wishes of nga hapu o Waimamaku.

g) The act of the Crown in authorising the construction of a television transmitter on Piwakawaka.

3.4.3 Failure to Protect Wahi Tapu outside

Kaharau

Kaiparaheka

Whangaparaoa

Te Pure

a) The omission of the Crown to ensure that all the Wahi Tapu listed above, that are within the Waimamaku region, be reserved from the sale of the Waimamaku No. 2 Block in 1875 and the subsequent alienation of these Wahi Tapu to private purchasers to the further prejudice of nga hapu o Waimamaku.

b) The on-going omission of the Crown to recognise the tino rangatiratanga and mana of nga hapu o Waimamaku over all those Wahi Tapu.

c) The general omission of the Crown to adequately and actively protect all those Wahi Tapu in accordance with the wishes of nga hapu o Waimamaku and, in particular, the omission of the Crown to adequately and actively enforce the provisions of the Historic Places Act 1980 (and its statutory predecessors), to protect archaeological and traditional sites on those Wahi Tapu.

Kaiparaheka

d) The dedication and subsequent administration of part of Kaiparaheka by or on behalf of the Crown as the Waiotemarama Scenic Reserve without the consent or involvement of tangata whenua.

e) The further reduction in the area of the Scenic Reserve by the Crown for use as compensation to the adjoining land owner for land taken for roading.

f) The act of the Historic Places Trust in 1988 on behalf of the Crown in giving retrospective permission to the Department of Conservation to bulldoze part of the reserve thereby damaging a pa site on Kaiparaheka.

3.4.4 Desecration of Taonga

a) The omission of the Crown since 1840 to take steps to absolutely and actively protect the Waimamaku taonga including the failure to:

i) Make illegal the buying and selling of the taonga by private persons and public bodies;

ii) Prohibit absolutely the export of such taonga;

iii) Make illegal and punish in accordance with the wishes of tangata whenua those responsible for desecration of wahi tapu at Kohekohe and Piwakawaka and the Waimamaku taonga and otherwise generally to recognise and uphold te tino rangatiratanga and mana of tangata whenua over those places and taonga.

b) The further acts and omissions of the Crown in relation to the Waimamaku taonga in violation of the ownership of those taonga by tangata whenua and the tapu on them, including:

i) Initially claiming outright ownership of the Kohekohe taonga as an incident of the Crown's alleged ownership of Kohekohe;

ii) Acquiring in 1902 from one Morrell two of the wakatupapaku from Kohekohe and subsequently other taonga which Morrell donated to the Auckland Museum;

iii) The acts of its agents in removing at least five further wakatupapaku from Kohekohe;

iv) Refusing to unreservedly return all the Kohekohe taonga to tangata whenua despite repeated demands to do so;

v) Cabinet's decision, on behalf of the Crown, prior to the hearing at Rawene on 21 May 1902 and in full knowledge of tangata whenua demands for the return of all Kohekohe taonga, that the Kohekohe taonga ultimately be placed on permanent display in the Auckland Museum, which includes public display without the consent of tangata whenua;

vi) Removing the Kohekohe taonga to Rawene before a hui could be held at Waimamaku to discuss the matter;

vii) Failing to ensure that all ko-iwi removed from Waimamaku wahi tapu be immediately returned to the wahi tapu concerned or into the safe custody of tangata whenua;

viii) The continued exercise through the Crown's agents of control over the Kohekohe taonga notwithstanding the vesting of the taonga in the Native Minister on trust, the terms of which are set out in a petition of certain Rangatira to the Native Minister;

ix) Failure to ensure strict adherence to the terms of the said trust;

A. That the taonga be deposited in the Auckland Museum where they not be touched or removed;

B. That the taonga remain there forever without disturbance;

C. That a printed account of the tupuna who made the taonga and of those connected with them be lodged with the taonga;

D. That all of Kaharau be returned to tangata whenua.

x) Failing to obtain tangata whenua consent to any variation to the terms of the trust or its execution to authorise any of the said breaches of trust;

xi) Permitting Morrell to retain at least twenty-six other taonga taken from Kohekohe and permitting him to donate them to the Auckland Museum;

xii) Further purchases by the Dominion Museum on behalf of and with the approval of the Crown in 1906 and 1907 from dealers including Messrs Dannefaerd and Spencer of Wakatupapaku belonging to tangata whenua and which originated from wahi tapu at Piwakawaka, such taonga being now found in the National and Otago Museums;

xiii) Permitting the purchase of another wakatupapaku from Piwakawaka wahi tapu by Hamilton, the curator of the Dominion Museum, from Dannefaerd for Hamilton's private collection, which wakatupapaku is now believed to be in the National Museum;

xiv) Disputing tangata whenua's ownership of the Piwakawaka wakatupapaku and/or failing to acknowledge the origin of those wakatupapaku;

xv) Failure to unreservedly return the Piwakawaka taonga to tangata whenua;

xvi) Failure to prevent the removal of Waimamaku taonga from New Zealand such that one wakatupapaku is now to be found in Melbourne, Australia and another is believed to be in Austria;

xvii) Permitting scientific examinations, photographs, drawings, studies and public displays of the Waimamaku taonga without the express consent of tangata whenua and in breach of the trust over the Kohekohe wakatupapaku.

3.4.5 Failure to reserve all of the Wairau wahi tapu

a) The omission of the Crown to ensure that area known as the Wairau wahi tapu which was to be reserved in its entirety from the sale of the surrounding Waimamaku No. 2 Block, was fully and correctly surveyed prior to the sale and in particular:

i) The act of the Crown in utilising Kensington's compiled plan ML 3278A on the Deed of Sale and Memorial of Ownership of Waimamaku No. 2, which plan does not record the correct southern boundary of the Wairau wahi tapu which is a straight line from the south east corner of the reserve to the traditional boundary marker on the coast known as Motuhuru.

b) The omission of the Crown to actively and adequately protect those wahi tapu on the land mistakenly omitted from the Wairau reserve including urupa and the pa Pakiri.

c) The acts of the Crown or its agents in obstructing or preventing access to the land omitted from the Wairau reserve by Waimamaku whanau whose tupuna have used that land for centuries and the further incorrect allegations that tangata whenua have been trespassing on that land.

d) The omission of the Crown in failing to fully investigate the accuracy of the legal southern boundary of the Wairau reserve when provided by Reupena Tuoro in 1897 with a complete description of the correct boundaries of the reserve.

e) The continued omission of the Crown in failing to return to Te Roroa the land mistakenly omitted from the Wairau reserve.

3.4.6 Failure to protect Maori traditional fishery at Waimamaku

a) The omission of the Crown or its agents to recognise tangata whenua tino rangatiratanga over the traditional fresh water fisheries at Waimamaku including the Waiotemarama stream, the Waimamaku river, the Wairau stream and over the traditional coastal fisheries including Kawerua, Opeperu, Taunganui, Waihikeke, Te Mowhiti, Panahe, Jacko's Point, Kaikai, Pukorokoro, and Wharewera.

b) The omission by the Crown or its agents to control fertilizer, pesticide, herbicide and effluent run-off from surrounding farms into the Waiotemarama and Waimamaku rivers and the taking of water and gravel from the said rivers, all to the detriment of the traditional fisheries there.

c) The imposition on tangata whenua by the Crown or its agents of the requirement to obtain fishing permits in breach of the Treaty guarantees of protection of traditional fisheries.

3.4.7 Desecration of Koiwi

a) Participating in the looting of Kohekohe koiwi by Pakeha in the early part of this century;

b) Purchasing or receiving further Waimamaku koiwi from private parties either;

- i) in the knowledge that the vendor(s) or donor(s) did not have the right to sell or to dispose of the koiwi; or
- ii) failing to take reasonable steps to ascertain whether the vendor(s) or donor(s) had such right;
- c) Refusing or failing to ensure the immediate return to tangata whenua of all Waimamaku koiwi that were at any time wrongfully taken by the Crown or third parties;
- d) Allowing the koiwi to be dealt with, or dealing with the koiwi, in a manner utterly inconsistent with the tapu of those koiwi and repugnant to the mana of tangata whenua;
- e) Failing to punish, in accordance with the wishes of tangata whenua, all those individuals who participated in any way and at any time in the desecration of the koiwi;
- f) The omission of the Crown in failing to immediately and unreservedly implement the direction of Magistrate Blomfield that those koiwi unlawfully taken from Kohekohe be returned to that wahi tapu;
- g) Generally the omission of the Crown since 1840 to actively and absolutely protect all the koiwi, which are a great taonga of tangata whenua ki Waimamaku;
- h) And the further particulars set out above at 3.4.4 insofar as the taonga referred to there contained, at the relevant time, koiwi.

3.4.8 Failure to reserve Te Taraire wahi tapu

- a) The claimants repeat the particulars 3.4.1(a) above.
- b) The Crown's omission to ensure that the Deed of Sale and Memorial of Ownership of Waimamaku No. 2 Block, which were duly confirmed by the Native Land Court, accurately recorded the correct boundaries of Te Taraire and excluded that wahi tapu from sale to the Crown and in particular:
 - i) the Crown's omission to ensure an approved and properly surveyed plan of Te Taraire was before the Native Land Court on the hearing of the Crown's application in respect of the Waimamaku No. 2 Block on 19 June 1875;
 - ii) the utilisation by the Crown of Kensington's compiled plan ML 3278A in the Deed of Sale which plan failed to show the reserve of Te Taraire and which subsequently resulted in the Crown and private persons claiming ownership of Te Taraire.
- c) The expropriation by the Crown without compensation or payment to nga hapu o Waimamaku of Te Taraire contrary to the terms of sale;
- d) The subsequent alienation by the Crown of Te Taraire to private parties to the further prejudice of nga hapu o Waimamaku;

e) The omission of the Crown to grant the relief sought by the petitions of Wiremu Ngakuru and others dated 9 June 1925; Matene Naera and 42 others (petition number 82 of 1930) and Piipi Cummins and 67 others in 1934, all of which sought the return of Te Taraire to nga hapu o Waimamaku.

f) The omission of the Crown to implement the findings and recommendations in respect of Te Taraire made by Judge Acheson in 1932 and the act of the Crown in implementing the contrary decision of Chief Judge Jones.

g) The on-going omission of the Crown to recognise the tino rangatiratanga and mana of nga hapu o Waimamaku over Te Taraire.

SECOND SCHEDULE

Particulars of Breaches of the Terms and Principles of the Treaty of Waitangi

WE, the claimants and Te Roroa of which we are members and others, have been prejudicially affected by the matters set out in the Heads of Claim herein and as specified in the second column below, and that those matters were or are inconsistent with the principles and terms of the Treaty of Waitangi as specified in the first column below.

Principle or Term of Heads of Claim the Treaty of Waitangi

1. Active Protection All Heads of Claim except 3.2.2.
2. Fiduciary Duty All Heads of Claim.
3. Honour of the Crown All Heads of Claim.
4. Non-Derogation All Heads of Claim.
5. Remedy of Past Breaches All Heads of Claim.
6. Sharp Practices All Heads of Claim except 3.1.3-3.1.5, 3.2.4 and 3.2.7.
7. Tino Rangatiratanga All Heads of Claim except 3.2.8 and 3.2.9.
8. Treaty Process All Heads of Claim except 3.1.4, 3.2.8, 3.2.9 and 3.3.1.
9. Tribal Endowment All Heads of Claim except 3.1.4, 3.2.1 and 3.2.2.

10. Utmost Good Faith Heads of Claim 3.1.1-3.1.3,
3.2.1, 3.2.2, 3.2.5, 3.2.6,
3.2.8-3.2.10, 3.3.1-3.3.3.

Waitangi Tribunal, Department of Justice, Wellington.