

APPENDIX I

STATEMENTS OF CLAIM

BEFORE THE WAITANGI TRIBUNAL

WAI 46

CONCERNING The Treaty of Waitangi Act 1975

AND A Claim by HIRINI MOKO MEAD and
 others for Ngati Awa relating to Ngati Awa

STATEMENT OF CLAIM

CONTENTS

	Page
A. BACKGROUND FACTS	147
1. The Claimants	147
2. Ngati Awa and the Treaty of Waitangi	147
3. The Position of Ngati Awa prior to the Raupatu	148
4. Events Leading to the Raupatu	149
5. The Raupatu	152
6. Events following the Raupatu	154
Wilson's Arrangements	154
The Compensation Court	155
Loss of Land Returned to Ngati Awa	155
Loss of Lands Outside the Confiscation Boundary	156
Rotoehu Forest	156
The Southern Blocks (The Matahina Forest and the Land Surrounding the Forest including the Pokohu, Matahina, Putauaki, Tuararangaia and Te Haehaenga Blocks)	156
Te Putere Reserve	157
Mataatua Meeting House	157
The Rangitaiki Swamp	157
Awakeri Hot Springs	158
Loss of Riparian Rights at Wairaka Marae	158
Matahina Dam	158
Putauaki	158
Pollution	159
Petitions and Negotiations to Redress Grievances	159

B. BREACHES OF TREATY OF WAITANGI 159

C. PREJUDICIAL EFFECT OF BREACHES OF TREATY 161

D. COMPENSATION SOUGHT 162

MAPS

A. The Rohe of Ngati Awa and its Significant Features 163

B. Land Confiscated within the Rohe of Ngati Awa 164

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The Treaty of Waitangi Act 1975

AND

A Claim by HIRINI MOKO MEAD and others for Ngati Awa relating to Ngati Awa

A. BACKGROUND FACTS

1. The Claimants

1.1 THE claimant HIRINI MOKO MEAD is of Ngati Pahipoto and Ngai Te Rangihouhiri, both being hapu of Ngati Awa and is the Chairman of Te Runanga O Ngati Awa.

1.2 TE RUNANGA O NGATI AWA is a Maori Trust Board within the meaning and for the purposes of the Maori Trust Boards Act 1955 and is a Body Corporate constituted by the Te Runanga O Ngati Awa Act 1988 ('the Act').

1.3 PURSUANT to Section 4(2) of the Act the beneficiaries of Te Runanga O Ngati Awa are the descendants of the hapu of Ngati Awa.

1.4 PURSUANT to Section 11 of the Act it is declared that after the passing of the Act (ie 21 December 1988):

'The character, mana, and the reputation of the persons of Ngati Awa descent who were arrested, tried, and labelled as rebels in or about 1865 is restored to them and their whanau and to the Iwi of Ngati Awa as a whole and a full pardon is hereby granted to them in respect of all matters arising out of the land wars in 1865.'

1.5 THE claimant brings this claim on behalf of Ngati Awa as defined in paragraph 1.6 below.

1.6 NGATI AWA is a member of the Mataatua group of tribes and consists of the following Iwi and hapu (presently totalling approximately 10,000 people):

Ngati Hokopu (Wairaka)
Ngati Hokopu (Te Hokowhitu)
Te Wharepaia

Ngai Taiwhakaea
Te Patuwai
Ngati Pukeko
Ngati Rangataua
Ngati Tamapare
Ngai Te Rangihouhiri
Ngati Hikakino
Ngati Tuariki
Te Pahipoto
Warahoe
Te Kahupake
Nga Maihi
Ngati Tamawera
Ngai Tamaoki
Ngati Hamua
Te Tawera-Umutahi
Ngati Maumoana
Ngati Awa-Ki-Tamaki-Makaurau
Ngati Awa-Ki-Poneke

1.7 NGATI AWA is and at all material times was based in the eastern Bay of Plenty centred in and around the communities known as Ohiwa, Ohope, Whakatane, Poroporo, Paroa, Edgecumbe, Te Teko, Kawerau, Te-Awa-a-te Atua (Matata), Otamarakau, Waihi Estuary and Pukehina.

2. Ngati Awa and the Treaty of Waitangi

2.1 IN 1840 Ngati Awa was an independent Iwi recognised by other tribal groups and by the Crown. A number of Ngati Awa Chiefs signed the Treaty of Waitangi at Whakatane on 16 June 1840 on behalf of Ngati Awa. These Chiefs were: Tautari, Mokai, Mato, Tarawatewate, Tunui, Taupiri, Haukakawa, Piariari, Matatehokia, Rewa, Tupara and Mokai (son of Mokai).

2.2 UNDER Article 2 of the Treaty Ngati Awa was guaranteed ‘Te tino rangatiratanga o o ratou kainga me o ratou taonga katoa’ described in the English version as ‘The full exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties . . .’

2.3 BY Article 3 of the Treaty Ngati Awa were given the Rights and Privileges of British subjects.

2.4 IT is implied by the provisions of the Treaty that:

- (a) The parties to the Treaty, namely the Crown and Maori, have a duty to act reasonably and in good faith towards each other.
- (b) The Crown has a duty and responsibility to ensure that any Maori people selling land in fact wish to sell and to ensure that such Maori people are left with sufficient land for their maintenance and support or livelihood.
- (c) The Crown has a duty not to divest itself of its Treaty obligations by conferring an inconsistent jurisdiction on the Native Land Court or other judicial or non-judicial bodies.
- (d) A breach of the Treaty by one party gives a right to redress from the other.

3. The Position of Ngati Awa prior to the Raupatu

3.1 IN 1865 Ngati Awa held Te Tino Rangatiratanga over its Rohe as follows:

- (a) The islands of Motiti, the Rurima group, Moutohora (Whale Island), Volkner Rocks, Whakaari (White Island), Ohakana and Uretara (both the latter two islands being situated in Ohiwa Harbour) and the seas from Waihi Estuary (near Maketu) to Ohiwa Harbour.
- (b) The land, forests, lakes, rivers and swamps bounded to the north by the coastline from Waihi Estuary to Ohiwa, to the west from the Waihi Estuary along the Pongakawa River to Lake Rotoehu (including the lake itself and the Rotoehu Forest), from Lake Rotoehu to the Te Haehaenga, Pokohu and Matahina Blocks (including Lake Rotoma), to the south along the Waikowhewhe River towards Rangitaiki, across the Rangitaiki River to include the Tuararangaia Block

and on the east along the Whakatane River to Taneatua across to the Nukuhou River and from there along the Nukuhou River to Ohiwa Harbour.

- (c) Within the Rohe the following features and resources were of special significance to Ngati Awa:

- (i) The mountains called Putauaki (Mt Edgcumbe), Whakapo Korero (near Matata), and Maunga Whakamana, the hill called Te Tiringa (at Awakeri) and the headland called Koohi Point (at Whakatane).

- (ii) The rivers called Whakatane, Orini, Rangitaiki, Tarawera, and Waitahanui.

- (iii) The Rangitaiki Swamp and Wetlands.

- (iv) The forests at Rotoehu, Matahina, Kiwinui, Tarawera, and Manawahe.

- (v) The lakes called Rotoehu, Rotoma, Kawerau, Te Tahuna, Roto-Onerahi, Rotoiti-Paku, Onepu and Rotoroa.

- (vi) The thermal areas at Kawerau, Awakeri, Moutohora and Whakaari.

- (vii) The harbour at Ohiwa.

- (viii) The estuaries at Waihi, Te-Awa-a-Te Atua (at Matata), and Whakatane.

- (ix) The islands referred to above and the resources of the sea along the coastline and around those islands.

- (x) Red Ochre mining sites at various places near Matahina and Otamarakau.

- (xi) The mutton-bird grounds at Moutohora and in the hills at Ohope and Matata.

- (xii) Sacred sites of special cultural significance ie

- Kapu-te-rangi (Toi’s Pa on Koohi Point above Whakatane)

- Marae-totara (Toi’s burial place at Ohope)

- Whakatane (landing place of the Mataatua Waka)

- Matire-rau (garden at Wairaka Marae, Whakatane)

- Tupapaku-rau (site of an ancient house of learning at Whakatane)

- Te Toka-a-Taiau (rock at the mouth of Te Wairere Stream at Whakatane)

- Irakewa (sacred rock in Whakatane River)

- Pohatu-roa (sacred rock at Whakatane near which Treaty of Waitangi was signed)

—Rotoiti-paku (small lake at Kawerau where the Taniwha of Irakewa lived)
 —Ohui (hill inland from Putauaki which symbolised peace between Tuhoe and Ngati Awa)
 —Putauaki Maunga (symbolic mountain of Ngati Awa traditionally used as a burial site)
 —Otitapu (important staging and look-out points of Ngai Te Rangihouhiri)
 —Te Kohika Pa (old Pa and burial site)
 —Matata township (originally named Te Awa-a-Te-Atua)
 —Te Marae o Whakatane (site of sacred Pouahu or altar near Matata)
 —Opihi-whanaunga-kore (ancient burial site on the coast at Whakatane)
 —Te Kaokaoroa (famous battle site along the coast from Matata towards the Waitahanui River)
 —Whakapaukorero (hill behind the township of Matata)
 —Otamarakau (traditional name of the Pa of Ngati Irawharo).

3.2 A map showing the Rohe of Ngati Awa and its significant features is annexed hereto and marked 'A'.

3.3 FURTHER, in 1865, Ngati Awa was self-governing, economically self-sufficient and prosperous and was actively engaged in trade and commerce. Commodities produced by Ngati Awa for sale on a commercial basis included pigs, flax, vegetables, wheat, timber and potatoes and commercial activities included flour milling, and merchant shipping. Commodities used for customary exchange transactions with other Iwi included the resources of the sea, red ochre and mutton-birds.

4. Events Leading to the Raupatu

4.1 IN 1863 the Crown passed the New Zealand Settlements Act 1863 which purported to allow the confiscation of Maori Land in certain circumstances, namely whenever the Governor in Council was satisfied that any Native Tribe, or any considerable number of Natives, had been engaged in rebellion against the Queen's authority.

4.2 IN 1863 and 1864 some members of Ngati Awa joined a force of Tairawhiti Chiefs and Warriors which intended to journey to Waikato for the purpose of assisting Waikato tribes in resisting the illegal invasion of their lands by Crown forces and European settlers. The Tairawhiti force was prevented from going to the Waikato by a combined force of Te Arawa Warriors and Crown soldiers and eventually turned back at the battle of Te Kaokaoroa.

4.3 IN late 1864 two prophets of the cult known as Paimarire (known to Europeans as Hauhau) arrived in the Bay of Plenty area and were able to convert some local Maori including members of Ngati Awa. Although the Paimarire movement was pacifist in origin and intent it was regarded as a barbaric and savage religion by the Crown and by European settlers.

4.4 IN March 1865 the Reverend Carl Volkner, a Missionary living in a nearby town of Opotiki was killed by local Maori under the influence of the Paimarire prophets. A few members of Ngati Awa were present in Opotiki at the time of the killing. Ngati Awa Chiefs, however, expressed strong regret and disapproval of the killing.

4.5 IN early July 1865 the Paimarire prophets in conjunction with some Ngati Awa Chiefs declared an aukati along the Bay of Plenty coast from Rurima Island along the coast to Tikirau (Cape Runaway) and inland from Rurima Island to Ruawahia and beyond. An aukati was a traditional method by which Maori asserted boundaries to their lands and had been used a few months earlier by Te Arawa. The primary reason for the aukati was to discourage Te Arawa from returning to Ngati Awa territory following the battle of Te Kaokaoroa.

4.6 ON 19 or 20 July 1865 the *Mariner*, a trading vessel belonging to Te Arawa, arrived at Whakatane. This event was regarded as a breach of the aukati by Paimarire and by some Ngati Awa and the vessel was confiscated.

4.7 ON 22 July 1865 the vessel *Kate* carrying a number of persons, including one James Fulloon, arrived at Whakatane. This event was regarded by Paimarire and some Ngati Awa as a second breach of the aukati.

4.8 ON 22 July 1865 Fulloon and three Europeans were killed on board the *Kate* by a group of Ngati Awa led by a Paimarire prophet.

4.9 ON 2 August 1865 the resident magistrate at Maketu issued a warrant for the arrests of those persons alleged to have been responsible for killing Fulloon and others.

4.10 BETWEEN August and October 1865, a Crown force numbering some 500 men consisting mainly of Te Arawa, with some Tuwharetoa, Raukawa and Ngati Manawa Chiefs and Warriors all under the command of a European Officer, purporting to act in pursuance of the warrant of arrest of 2 August 1865, unlawfully and without cause invaded the Rohe of Ngati Awa and destroyed Ngati Awa villages, meeting houses, store houses and canoes, seized cattle and horses, and after a siege at Te Teko, took as prisoners 35 Ngati Awa Chiefs and Warriors.

4.11 ON 2 September 1865 the Crown issued a 'Proclamation of Peace' the full text of which reads as follows:

'PROCLAMATION OF PEACE

By His Excellency Sir George Grey, Knight Commander of the Most Honourable Order of the Bath, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand, and Vice-Admiral of the same, &c, &c, &c.

THE Governor announces to the Natives of New Zealand that the War which commenced at Oakura is at an end.

The Governor took up arms to protect the European settlements from destruction, and to punish those who refused to settle by peaceful means the difficulties which had arisen, but resorted to violence and plunged the country into war.

Upon those Tribes sufficient punishment has been inflicted. Their war parties have been beaten; their strongholds captured; and so much of their lands confiscated as was thought necessary to deter them from again appealing to arms.

The Governor has therefore shown that he will not permit the peace of the Colony to be disturbed without inflicting severe chastisement on those who resist his authority.

The Governor hopes that the Natives will now have seen that resistance to the law is hopeless; he proclaims on behalf of the Queen, that all who up to the present time have been in arms against Her Majesty's authority will never be prosecuted for past offenses, excepting only

those who have been concerned in the murders of the following persons because those persons were barbarously and treacherously murdered:

The children Parker and Pote, killed at Omata, on the 27th March 1860;

The boy Joseph Sarten, killed at Henui, on the 4th December 1860;

The Native Ngakoti, who was killed, and his wife and her daughter killed at Kaipikari, in December 1861;

Mrs Margaret Fahey, killed at Rama Rama on the 16th October 1863;

The boys Richard Trust and Nicholas Trust, killed at Kennedy's Farm, on the 24th October 1863;

The Rev Mr Volkner, killed at Opotiki, on the 2nd March 1865;

Mr James Fulloon, and his companions, killed at Whakatane, on the 27th (sic) July 1865;

The Chief Rio Haeaterangi, killed near Wanganui, in January 1865.

The murderers of those persons will be brought to trial as soon as they are arrested.

The Governor also excepts from this pardon the Chief Te Pehi, because having taken the Oath of Allegiance to Her Majesty, he violated his oath, and treacherously attacked the Queen's troops at Pipiriki; when taken he will be brought to trial for his crime.

All others are forgiven.

Out of the lands which have been confiscated in the Waikato, and at Taranaki and Ngati-ruanui, the Governor will at once restore considerable quantities to those of the Natives who wish to settle down upon their lands, to hold them under Crown grants, and to live under the protection of the law. For this purpose Commissioners will be sent forthwith into the Waikato, and the country about Taranaki, and between that place and Whanganui, who will put the Natives who may desire it upon lands at once, and will mark out the boundaries of the blocks which they are to occupy. Those who do not come in at once to claim the benefit of this arrangement must expect to be excluded.

The Governor will take no more lands on account of the present War.

As regards the prisoners now in custody, the Governor will hold them until it shall be seen whether those who have been in arms return to peace. If they do so the prisoners will be set at liberty.

The Governor is sending an expedition to the Bay of Plenty to arrest the murderers of Mr Volkner and Mr Fulloon. If they are given up to justice the Governor will be satisfied; if not, the Governor will seize a part of the lands of the Tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.

The Governor now calls upon all the Chiefs and Tribes to assist him in putting a stop to all such acts of violence for the future; for all, whether Europeans or Natives, have a common interest in putting an end to such crimes, and in preserving the peace of the Colony.

The Governor is about to call a meeting of all the great Chiefs to consult with his Government as to the best means whereby the Maori people may be represented in the General Assembly, so that they may henceforth help to make the laws which they are called on to obey. At that meeting all matters can be discussed, with a view of establishing a general and lasting peace throughout New Zealand.

Her Majesty the Queen desires that equal laws and equal rights and liberties may be enjoyed by all her subjects in this Island, and to that end the Governor in the name of the Queen publishes this Proclamation.

Given under my hand, at the Government House, at Wellington, and issued under the Public Seal of the Colony of New Zealand, this second day of September, in the year of our Lord one thousand eight hundred and sixty-five.

G GREY

By His Excellency's command,

FRED A WELD

GOD SAVE THE QUEEN!

4.12 ON 4 September 1865 the Crown issued a Proclamation of Martial law in the districts of Opotiki and Whakatane. The text of that proclamation is as follows:

‘PROCLAMATION

Proclaiming Martial Law throughout the Districts of Opotiki and Whakatane

By His Excellency Sir GEORGE GREY, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same, &c, &c, &c.

WHEREAS instructions have been issued and Military force has been employed to capture the Murderers of the Rev Mr Volkner, Mr James Fulloon and his companions, at Opotiki, and Whakatane:

And whereas it is expedient that summary authority should be exercised by the Commander of the Military Forces so employed, and that persons suspected of the said Murders, or of aiding and abetting therein, should be tried by Courts-Martial:

Now I, the Governor, do hereby proclaim that Martial Law will be exercised throughout the districts of Opotiki and Whakatane, from the date hereof until this Proclamation shall be duly revoked.

Given under my hand at the Government House, at Wellington, this 4th day of September, in the year of our Lord one thousand eight hundred and sixty-five.

G GREY

By His Excellency's command,

J C RICHMOND'

4.13 ON 26 September 1865 the Crown passed the Native Rights Act 1865 which had the effect, inter alia, of deeming all Maori born in New Zealand as natural born subjects of the Queen and purporting to give the Supreme Court and 'all other Courts of law within the Colony' jurisdiction over the persons and property of Maori people.

4.14 ON 9 October 1865 the Crown passed the Outlying Districts Police Act 1865 purporting to make it lawful, inter alia, for the Crown to take lands off persons who concealed, harboured or protected any persons who were suspected of committing certain crimes (including murder).

4.15 IN December 1865 Crown officials in conjunction with government military officers purported to conduct a Court Martial of the Ngati Awa prisoners and to condemn most of them to death.

4.16 IN May 1866, after the Court Martial had been declared illegal, the Ngati Awa prisoners were sent to Auckland and tried by the Crown in the Supreme Court for murder. After a trial which was conducted in an unjust and defective manner, five prisoners were found guilty and executed while the others were found guilty and sentenced to various terms of imprisonment. Four of the prisoners died in prison during 1866. The following matters are relied upon in support of the allegation that the trial was conducted in an unjust and defective manner:

- (a) The charges brought by the Crown were misconceived and without foundation in that English law was not in force in the Bay of Plenty in July 1865 and the death of Fulloon and the three Europeans had occurred in accordance with Tikanga Maori.
- (b) In any event the majority of the Chiefs and Warriors of Ngati Awa who were found to be guilty in respect of the charges brought as a result of the death of Fulloon and the others were not in fact or in law involved in their deaths.

- (c) The Chiefs and Warriors of Ngati Awa charged with the murder were not separately represented by legal counsel and no attempt was made by counsel appointed to represent them to distinguish between the defendants or to mount defences to the charges which may have been open to some or all of the defendants such as:
 - Whether English law applied to the defendants as at July 1865
 - Whether the death of Fulloon and the others was justified by Tikanga Maori and whether, in that event, the defendants had a lawful excuse for any part they may have played in their deaths
 - Lack of identification
 - Lack of legal or actual responsibility for the deaths.
- (d) The Chiefs and Warriors charged were not tried by a jury of their peers (no Maori were eligible for the jury).
- (e) The Chiefs and Warriors who were charged and convicted received unlawful excessive and unjust punishment in that they were not only hung or imprisoned but they and their relatives had already suffered additional punishment by loss of their lands as a result of the confiscation.

5. The Raupatu

5.1 ON 17 January 1866 by Order in Council the Crown issued a proclamation pursuant to the New Zealand Settlements Act 1863 confiscating some 440,000 acres of land in the Bay of Plenty. The proclamation reads as follows:

‘G Grey, Governor
 ORDER IN COUNCIL
*At the Government House, at Wellington,
 the Seventeenth day of January, 1866*

Present:
 HIS EXCELLENCY
 THE GOVERNOR IN COUNCIL

WHEREAS by “the New Zealand Settlements Act 1863”, it is enacted, amongst other things, that whenever the Governor in Council shall be satisfied that any Native Tribe or section of a Tribe, or any considerable number thereof, has, since the First day of January 1863 been engaged in rebellion against Her Majesty’s authority, it shall be lawful for the Governor in Council to declare that the district within which any land, being the property or in the possession of such Tribe, or section or considerable number

thereof, shall be situate, shall be a district within the provisions of the said Act, and the boundaries of such district in like manner to define and vary as he shall think fit:

AND WHEREAS the Governor in Council is satisfied that certain Native Tribes and sections of Native Tribes having respectively as their property or in their possession land situate within the district described in the Schedule hereunder written have, since the First day of January 1863, been engaged in rebellion against Her Majesty’s authority:

NOW THEREFORE his Excellency the Governor, in exercise of the power vested in him by the said recited Act, doth hereby, with the advice and consent of the Executive Council of the Colony of New Zealand, declare that, from the date hereof, the district the boundaries whereof are defined and described in the Schedule to this Order, shall be a district within the provisions of “the New Zealand Settlements Act 1863”, and shall be designated by the name of the Bay of Plenty district, and doth hereby reserve and take the lands within the said district for the purposes of settlement; and doth hereby declare that all such lands are required for the purposes of the said Act, and are subject to the provisions thereof from the day of the date of this order.

SCHEDULE

Bay of Plenty District

All that land bounded by a line commencing at the mouth of Waitahanui River, Bay of Plenty, and running due south to the Tarawera River; thence by a straight line to the summit of Putanaki (sic) (Mt Edgecomb) (sic); then by a straight line in an easterly direction to the confluence of the rivers Tauwhare and Ohiwa; thence by a line running due east for 25 miles; thence by a line to the mouth of the Aparapara River in the Bay of Plenty.’

5.2 BY Order in Council made on 1 September 1866 the description of the land confiscated was altered to read as follows:

‘All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south for a distance of 20 miles; then to the summit of (Mt Edgecomb) (sic) Putanaki (sic); thence by a straight line in an easterly direction to a point 11 miles due south from the entrance to the Ohiwa Harbour; thence by a line running due east for 25 miles; thence by a line to the mouth of the Aparapara River and thence following the coastline to the point of commencement at Waitahanui.’

5.3 A map showing the land confiscated in comparison with the Rohe of Ngati Awa (as described in paragraph 3.1 above) is annexed

hereto and marked 'B'. The boundaries established by the Crown of the land confiscated were arbitrary and never in fact coincided with the true boundaries of the Ngati Awa Rohe.

5.4 THE total amount of land confiscated by the Crown under the said Orders in Council was approximately 440,000 acres of which approximately 245,000 acres were within the Rohe of Ngati Awa.

5.5 THE confiscation of Ngati Awa land was allegedly justified by Ngati Awa having been engaged in rebellion since 1 January 1863 but this was and is untrue and in fact the dominant motive for the confiscation by the Crown was to obtain control over Ngati Awa land and its disposition to and settlement by European Militia and settlers or to 'loyal Natives'. The claimants rely upon the following facts and matters to justify these allegations:

(a) By about 1860 the Crown was under pressure to make land available for settlers from Britain and the Crown also perceived land sales as a means of obtaining revenue. Efforts by the Crown to purchase Maori land for these purposes, particularly in Taranaki and Waikato, had been met by reluctance on the part of Maori to sell and by difficulties in identifying those Maori who had authority to sell particular areas of land. In response to these and other pressures (see subparagraphs (b), (c) and (d) below) the Crown became involved in armed conflict with Maori in Taranaki and Waikato. Further, in 1862 the Crown passed the Native Lands Act 1862 which, inter alia:

(i) Waived the Crown's right of pre-emption of purchase of Maori land.

(ii) Established a Native Land Court for the purpose of determining Maori ownership of Maori lands and the issue of Certificates of Title to those owners.

In 1865 the 1862 Act was replaced by the Native Lands Act 1865 which was similar to the 1862 Act but went further by, inter alia:

(i) Stating its objective as being 'to encourage the extinction of (native) property customs'.

(ii) Prohibiting the sale or leasing of Maori land unless the title had been investigated and a Certificate of Title issued.

(b) Furthermore, prior to 1865 the Crown had promised troops who had been engaged by the Crown to fight against Maori, land for settlement and accordingly needed land to satisfy those promises. The promises are evidenced by a notice which appeared in the *New Zealand Gazette* of 12 September 1863, the material terms of which made provision for soldiers to be rewarded with land according to his rank as follows:

Field Officer	400 acres
Captain	300 acres
Surgeon	250 acres
Subaltern	200 acres
Sergeant	80 acres
Corporal	60 acres
Private	50 acres

(c) Further, the Crown needed land to sell for the raising of revenue for the Auckland Provincial Government.

(d) Up until January 1866 Ngati Awa control over its land and commercial activity was strong and some persons holding power in the provincial governments were seeking to destroy that control and commercial activity for their own advantage and for the purpose of deterring other Maori from resisting European authority.

(e) Despite the pressure on the Crown to obtain land from Maori, the Crown made no effort prior to the confiscation to purchase land from Ngati Awa peaceably.

(f) The Crown force which invaded the Rohe of Ngati Awa in August 1865 was ostensibly sent to execute a warrant for the arrest of persons alleged to have killed Fulloon but the force was excessive in size for that purpose and was provocatively composed predominantly of Te Arawa Warriors who were traditional enemies of Ngati Awa.

(g) Most of the persons named in the warrant of arrest were Paimarire followers and the enforcement of the aukati by the killing of Fulloon had been carried out at the urging of a Paimarire prophet.

(h) Further, the enforcement of the aukati was consistent with Tikanga Maori, and was not governed by European law as the enforcement occurred prior to the passing of the Native Rights Act 1865 and in an area where Maori were self-governing and independent.

- (i) Despite the provocation of the Crown invasion force as referred to in (f) above, Ngati Awa did not resist that force apart from some intermittent and minor skirmishing between the invasion force and a few villages of Ngati Awa. Other hapu of Ngati Awa remained neutral and did not seek to interfere with the invasion force. Following a negotiation with Paimarire followers the Crown force succeeded in negotiating the surrender of persons named in the warrant for the purpose of arrest.
- (j) Accordingly:
- (i) None of the activities of Ngati Awa in 1863 and 1864 constituted a rebellion or alternatively if there was such a rebellion it was forgiven by the Proclamation of Peace issued on 2 September 1865 as confirmed by the provisions of the Te Runanga O Ngati Awa Act of 1988.
- (ii) Further, the events of August to October 1865 did not and could not constitute a rebellion.
- (k) The Proclamation of 17 January 1866 also failed to comply with the provisions of the New Zealand Settlements Act 1863 and the conditions under which that Act was approved by the Colonial Office (UK) in accordance with Section 58 of the New Zealand Constitution Act 1852 (UK) in all or any of the following respects:
- (i) There was a failure to set up a Commission for the purpose of enquiring into what lands were to be confiscated as required by Condition 4 of the Colonial Office's consent.
- (ii) Land was confiscated from both loyal and allegedly rebellious natives merely because they were in the same district contrary to Condition 6 of the Colonial Office's consent.
- (iii) The Crown failed to make any attempt to distinguish between natives of 'lesser guilt' and the 'more guilty' contrary to Condition 7 of the Colonial Office's consent.
- (iv) The whole of the land declared to be a District by the Proclamation pursuant to Section 2 of the Act was taken for the purpose of settlements when in fact only a very small portion of the land was required for settlements and accordingly the Crown

acted in contravention of Section 4 of the Act.

- (l) Accordingly the Proclamation of 17 January 1866 was *ultra vires* the New Zealand Settlements Act of 1863 and was issued in order to take advantage of the circumstances then prevailing and by inference for the aims and purposes identified in subparagraphs (a) to (d) above.

6. Events following the Raupatu

Wilson's Arrangements

6.1 In February 1866 one John A Wilson was appointed by the Crown as a Special Commissioner responsible for making arrangements with Maori in relation to the land confiscated by the Crown in the Bay of Plenty district. The arrangements were to involve the 'ceding' of land by local Maori to the Government, the giving of land back to local Maori where appropriate, or the taking of land for survey. Crown policy at the time was that the land was to be distributed to military settlers first, 'friendly natives' second, and 'surrendered Natives' last. Pursuant to that policy Wilson imposed arrangements on local Maori in the Bay of Plenty district during 1866 and 1867.

6.2 THE result of the arrangements made by Wilson was that only 77,870 acres of the 245,000 acres confiscated were returned to Ngati Awa. Of the land not returned, 87,000 acres were given to various iwi, mainly to Te Arawa, on the basis of those iwi being 'loyal Natives' and by way of reward for military service rendered by Te Arawa against Ngati Awa in 1865. The balance of approximately 80,000 acres was retained by the Crown.

6.3 THE arrangements made by Wilson had no validity under the New Zealand Settlements Act 1863 because all claims regarding land taken under that Act were required to be determined by a Compensation Court. In fact only a very small proportion of the land confiscated from Ngati Awa was dealt with by the Compensation Court. In order to validate Wilson's arrangements the Crown was obliged to pass a number of further Acts including the Confiscated Lands Act 1867, the Richmond Land Sales Act 1870, the Whakataane Grants Validation Act 1878, and the Native

Land Claims & Boundaries Adjustments & Titles Empowering Act 1894.

6.4 THE bulk of the land returned to Ngati Awa was included in six Reserves namely:

- (a) A reserve situated on the Western side of the Whakatane River (the Whakatane Reserve) consisting of approximately 37,261 acres.
- (b) A reserve situated at Omataroa consisting of approximately 20,400 acres.
- (c) A reserve on and around Putauaki consisting of approximately 12,710 acres.
- (d) A reserve situated at Kokohinau consisting of approximately 2,527 acres.
- (e) A reserve situated at Pokerekere consisting of approximately 1,875 acres.
- (f) A reserve situated at Ohope consisting of approximately 1,575 acres.

6.5 THE balance of the land returned to Ngati Awa was included in approximately nine other reserves of between four acres and two hundred acres.

6.6 THE following effects resulted from the arrangements made by Wilson:

- (a) The reserves were located mostly on flood-prone swamp land or land in the hills while the best flat and fertile land was taken for the Crown or for settlers.
- (b) The boundaries of the reserves generally bore little or no relationship to the traditional boundaries of the hapu who were required to live in the reserves.
- (c) The land in the reserves was returned to Ngati Awa by way of Crown grant and individualised title and by this method most Iwi and hapu members were disinherited from the lands that were returned.
- (d) Many of the arrangements were made with Maori who did not truly represent the hapu of the land involved and this resulted in boundary disputes that continued for many years.
- (e) Wilson treated all Ngati Awa the same regardless of the involvement or otherwise of hapu in the events of 1865 by settling all Ngati Awa on the reserves.
- (f) Wilson confiscated some eel weirs and other property including flour mills and gave them to 'friendly natives'.

(g) Military settlements were established at Te Teko and Ohiwa giving rise to a feeling on the part of Ngati Awa of being under military rule and observation.

(h) Iwi from outside the Rohe of Ngati Awa were given lands within the Rohe therefore promoting the disintegration of Ngati Awa, eg, land at Whakatane was given to Ngati Pikiario and Patuheuheu, and land near Matata was given to Ngati Raukawa and Ngati Manawa.

The Compensation Court

6.7 DURING 1867 a Compensation Court sat in Maketu, Whakatane and other places, ostensibly for the purpose of assessing and awarding compensation to all those who had any title, interest or claim to the confiscated land in accordance with the provisions of the New Zealand Settlements Act 1863. However, apart from a few minor claims, the Court failed or refused to entertain any claims from Ngati Awa and conducted its hearings upon the unjust and wrongful basis that Ngati Awa members had no right to a claim for compensation under the terms of the New Zealand Settlements Act 1863.

Loss of Land Returned to Ngati Awa

6.8 ALTHOUGH land was returned by the Crown to Ngati Awa (as referred to in paragraph 6.2 above) approximately 50,000 acres (or approximately 65% of the land returned) subsequently passed out of Ngati Awa possession and control or was alienated. Significant causes of this further loss of land by Ngati Awa were:

(a) The destruction of customary title and traditional methods of Maori ownership or control by transfer of lands into titles owned by individuals. This was accomplished by:

- (i) The passing of legislation designed to achieve ownership of Maori land by individuals, eg, the Native Lands Act 1862 (and the subsequent Native Land Acts of 1865, 1867, 1873, 1894 and 1909 etc), the New Zealand Settlements Act 1863 and its amendments, the Confiscated Lands Act 1867, the Native Trust & Claims Definition & Registration Act 1893, the Native Land Claims & Boundaries Adjustment & Titles Empowering Act 1894.

- (ii) Orders of the Compensation Courts and the Native Land Courts under those Acts awarding Maori land to individual owners.
- (b) The alienation of Maori land by transfer or by vote under the Native Land Act 1909.
- (c) The taking of land under the Public Works Act 1908 (and subsequent Public Works Acts).
- (d) The taking of land to meet survey costs.
- (e) The purchase of undefined share interests of individual Maori owners.
- (f) The taking of land in lieu for default in payment of mortgages, rates, non-use of land, noxious weeds, and statutory land charges.

Loss of Lands Outside the Confiscation Boundary

6.9 IN addition to the land of Ngati Awa situated within the confiscation boundary which was lost by Ngati Awa either by reason of the confiscation or by reason of the matters set out in paragraph 6.8 above, Ngati Awa also lost, as a result of the confiscation and events consequent upon the confiscation, lands outside the confiscation boundary, notably the Rotoehu Forest and the land around that forest (insofar as the forest and the land lies outside the confiscation boundary), the Matahina Forest and the land surrounding that forest including the Te Haehaenga Block, the Pokohu Block, the Putauaki Block, and the Tuararangaia Block. The causes of that loss are as follows:

Rotoehu Forest

- (a) The portion of the Rotoehu Forest lying outside the confiscation boundary falls within the blocks of land lying to the south of Otamarakau known as Waitahanui and Tahunaroa.
- (b) Ownership of those blocks was determined by sittings of the Native Land Court in 1870–71 and 1878 with a final decision being given on 19 June 1878. By that decision the Court decided that Waitaha, a hapu of Te Arawa, was entitled to ownership of the Waitahanui and Tahunaroa blocks.
- (c) The decision of the Court was erroneous and contrary to the evidence for the following reasons:
 - (i) Although the blocks of land had in ancient times been occupied by Waitaha, Ngati Awa, mainly through Ngai Te

Rangihouhiri and Ngati Hikakino, had established mana whenua over the land by Ringakaha (or conquest) and occupation for over two hundred years.

(ii) The Court proceeded upon the assumption that customary title to the Waitahanui and Tahunaroa blocks should be determined by ascertaining the Iwi or hapu that had control over the land around the Pa at Otamarakau. In so doing the Court erroneously ignored or failed to take into account evidence of longstanding Ngati Awa control of the inland areas of these blocks by the establishment of Pa at Otitapu, Manawahe and on the shores of Lake Rotoehu.

(iii) The Court found that following the Battle of Te Tumu in 1836, only Waitaha had returned to the Otamarakau District. This was untrue, as various hapu of Ngati Awa, eg, Ngai te Rangihouhiri, Ngati Hikakino, Ngati Pukeko, Ngati Patuwai and Ngati Whakahemo also occupied the area.

(iv) The Court erroneously believed that the Battle of Te Tumu represented a victory of Te Arawa over Ngai Te Rangihouhiri of Ngati Awa when in fact the defeated party was Ngai Te Rangi of Tauranga.

(v) The Court's finding in favour of Waitaha/Te Arawa is contradicted by the later findings of the Court in 1878 and 1888 that a Ngati Awa hapu, Ngati Whakahemo, was the occupier and owner of Pukehina Block, being a block lying to the west of the Waitahanui and Tahunaroa blocks.

- (d) The Court's findings in relation to the Waitahanui and Tahunaroa blocks, were influenced by a general reluctance to find that Ngati Awa had a claim to any lands outside the confiscation boundary, by a preference for claims by Te Arawa as loyal natives, and by the fact that since the confiscation and the arrangements made by Wilson, hapu of Te Arawa had been encouraged to move into the Otamarakau area in preference to the dispossessed Ngati Awa.

The Southern Blocks (the Matahina Forest and the lands surrounding the forest including the Pokohu, Matahina, Putauaki, Tuararangaia, and Te Haehaenga Blocks)

- (a) Although the abovenamed Southern Blocks were part of the Rohe of Ngati Awa,

significant portions of those Blocks were awarded to other Iwi by the Native Land Court, eg,

—Half of the Pokohu Block (approximately 38,120 acres) was awarded to hapu of Te Arawa while the balance was split between Ngati Awa and Ngati Pou (a Ngati Awa hapu).

—The Tuararangaia Block (approximately 13,800 acres) was awarded to Tuhoe.

—The Te Haehaenga Block (approximately 30,000 acres) was awarded to Te Arawa.

- (b) The lands awarded to Ngati Awa were in the form of a Certificate of Title in favour of certain Ngati Awa owners who almost immediately after the grant were induced to sell significant portions of that land to the Crown. Subsequently the Crown has contributed much of the land purchased from Ngati Awa to the joint venture between the Crown, Tasman Pulp & Paper Limited and Maori for the establishment of the Tarawera Forest Joint Venture (see paragraph 6.27 and 6.28 below).

Te Putere Reserve

6.10 IN 1872 Sir Donald McLean, then Minister of Native Affairs, promised Ngati Awa that a reserve of approximately 500–600 acres would be set aside for the use of certain Ngati Awa hapu at Te Putere. Further and in partial performance of this promise, by Order-in-Council dated 14 December 1909 Lot 37 Awa-o-te-Aua (sic) Survey District (275 acres) at Te Putere was created a reserve for the use and occupation of Maori under the provisions of the Native Land Settlement Act 1907. However in 1917 the Crown, through the Lands Department incorporated Lot 37 with neighbouring Crown blocks and following incorporation the block of land thereby created was subdivided and sold resulting in the loss of the Maori Reserve at Te Putere.

Mataatua Meeting House

6.11 BETWEEN about 1872 and 1875 Ngati Awa built the whare named Mataatua at Whakatane. Mataatua was described in 1875 as ‘a grand carved house, said to be one of the finest in New Zealand’. The Whare was built to replace a previous one which had been destroyed but because of its name Mataatua was given a special spiritual and political significance as a symbol of the recovery of Ngati Awa following the

confiscation of 1866 and the invasion of Ngati Awa’s lands by Te Kooti in 1869 and as a symbol of reconciliation between Ngati Awa and other Iwi of the region, particularly Tuhoe, and also between those Iwi and the Crown.

6.12 IN 1879 Mataatua was sent by the Crown, with the consent and agreement of Ngati Awa, to the Intercolonial Exhibition in Sydney. Without any further consultation with Ngati Awa the Crown then arranged for Mataatua to be displayed at the International Exhibition in Melbourne of 1881 and subsequently at the South Kensington Museum in London, England. In 1924 Mataatua was displayed at the British Empire Exhibition at Wembley Park in London and was subsequently shipped back to New Zealand for the South Seas Exhibition at Dunedin in 1925.

6.13 SINCE 1925 Mataatua has remained in the Otago Museum. Despite numerous requests by Ngati Awa neither the Crown nor the Otago Museum has returned Mataatua to Ngati Awa.

The Rangitaiki Swamp

6.14 DESPITE the confiscation, some Ngati Awa land retained by the Crown, notably the Rangitaiki swamp area, continued to be used by Ngati Awa for traditional purposes, in particular as a source of food and building materials.

6.15 HOWEVER in 1890, after pressure from European settlers the Crown arranged for the surveying and leasing of the Rangitaiki swamp area to European settlers. Further, in 1894 the Rangitaiki swamp area was constituted a drainage district by Order in Council under the Land Drainage Act 1893 and as a consequence the swamp was then administered by a Drainage Board.

6.16 IN September 1910 the Crown passed the Rangitaiki Land Drainage Act 1910 which, inter alia:

- (a) Authorised the Minister of Lands to carry out any actions he saw fit for the drainage, reclamation and roading of the swamp area.
- (b) Imposed a benefit-based levy on the land.
- (c) Allowed the Government to take any part of the land under the Public Works Act 1908

or to purchase land under the Native Land Act 1909.

6.17 THE consequences of the matters referred to in paragraphs 6.15 and 6.16 above were that:

- (a) Between 1893 and 1910 the Drainage Board carried out drainage works in relation to the swamp area and such works continued under the auspices of the Minister of Lands from 1910 onwards.
- (b) Significant areas of the drained swamp land were acquired from Ngati Awa by the Government for compensation which was minimal and inadequate.
- (c) Ngati Awa were unable to develop their remaining swamp lands as a result of lack of access to development finance and capital.

Awakeri Hot Springs

6.18 IN 1879 (by Crown grant issued pursuant to an award of the Compensation Court), title to the Awakeri Hot Springs, which was a resource of special significance to Ngati Awa, and land surrounding the Springs, was vested in two members of Ngati Awa.

6.19 BY a proclamation issued in 1918 pursuant to the Public Works Act 1908 and the Scenic Preservation Amendment Act 1910 and by a further Proclamation in 1940 issued pursuant to the Public Works Act 1928 the Springs and the lands surrounding the Springs were taken by the Crown from the Ngati Awa owners.

Loss of Riparian Rights at Wairaka Marae

6.20 UP until about 1920 the Wairaka Marae at Whakatane bordered the Whakatane river and the inhabitants of the Marae enjoyed direct access to the river for fishing and for transport to cultivation plantations up-stream.

6.21 IN about 1920 the Whakatane Harbour Board constructed a stone wall in the Whakatane River with a view to diverting the course of the river to a deeper channel further out from shore. As a result of that construction silting occurred between the stone wall and the shore which in turn resulted in the shore line moving away from the Wairaka Marae to the extent that the inhabitants of the Marae no longer enjoyed direct access to the river. That situation has remained to this day.

Matahina Dam

6.22 IN 1968 the Crown took 974 acres of land at Matahina from Ngati Awa owners under the provisions of the Public Works Act 1928 for the purpose of constructing a dam on the Rangitaiki River together with an associated village.

6.23 IN the course of constructing the dam and the village the Crown:

- (a) Caused the loss in that area of the Rangitaiki River as a fishing resource.
- (b) Destroyed or caused the removal of sacred Ngati Awa burial grounds in the area.

6.24 ALTHOUGH the Rangitaiki River, a traditional resource of Ngati Awa, was an essential element of the Matahina Dam project, Ngati Awa were not invited by the Crown to participate in the financial rewards generated by the Dam project.

Putauaki

6.25 BY a decision of the Native Land Court given on 11 October 1881, the southern side of Putauaki was declared to be Ngati Awa land and vested in a limited number of Ngati Awa owners. The northern side was a Ngati Awa reserve pursuant to the arrangements made by Wilson as confirmed by grants made under the Confiscated Lands Act 1867.

6.26 WITHIN ten days of the Native Land Court decision of October 1881 the Crown induced the legal owners of the Ngati Awa land situated on the southern side of Putauaki to sell the bulk of those lands to the Crown. This was done without the consent of the beneficial owners.

6.27 IN 1967, following negotiations between Ngati Awa, the Crown and Tasman Pulp & Paper Company Limited ('Tasman'), Putauaki was transferred to Tarawera Forest Limited, being a company established as a joint venture between the Crown, various Iwi, and Tasman for the commercial development of the Tarawera forest.

6.28 MUCH of the land contributed by the Crown to the joint venture (which was the basis for the Crown subsequently acquiring a significant shareholding in Tarawera Forest Limited) was land which had been purchased from Ngati Awa as referred to in paragraph 6.9 ('The Southern Blocks') and 6.26 above.

6.29 NGATI AWA agreed to the transfer of Putauaki into the joint venture company upon the condition that Putauaki would be created as a Maori reservation and/or that the whole of Putauaki would be recognised by the joint venture as a sacred place where no planting of forest would be undertaken.

6.30 HOWEVER, following the transfer of Putauaki to Tarawera Forest Limited, and contrary to the agreement made with Ngati Awa, no Maori reservation was ever created and Tarawera Forest Limited carried out forest planting on Putauaki to a point approximately halfway up its slopes.

6.31 NGATI AWA was advised in relation to the establishment of Tarawera Forest Limited by the Maori Trustee and/or the Department of Maori Affairs who acted on behalf of the various Maori interests involved in the joint venture. The Maori Trustee and/or the Department of Maori Affairs failed to advise Ngati Awa adequately at all in respect of the following matters:

- (a) That it was not necessary to transfer the Ngati Awa land into the ownership of Tarawera Forest Limited in order to establish the joint venture as ownership of the lands involved in the joint venture could have been retained by the various joint venture partners.
- (b) That the arrangements and agreements made between the joint venture partners did not ensure that Putauaki would be preserved as a Maori reservation.
- (c) That Ngati Awa should insist upon a seat on the Board of Tarawera Forest Limited in return for the transfer of its lands into the joint venture.

6.32 FURTHERMORE, the Maori Trustee and/or the Department of Maori Affairs has failed to take appropriate action since the commencement of the joint venture to:

- (a) Protect Ngati Awa's wish that Putauaki be preserved as a Waahi Tapu and as a Maori Reservation; and
- (b) Ensure that Ngati Awa had a proper say in the affairs of Tarawera Forest Limited.

Pollution

6.33 SINCE the Raupatu, the Crown has allowed the Whakatane, Rangitaiki and Tarawera Rivers,

and associated canal systems, and the Ohiwa Harbour, to become polluted as a result of industrial and agricultural uses being permitted to discharge wastes into those resources.

6.34 FURTHERMORE, the Crown has allowed the pollution of the air over Ngati Awa lands, particularly in the areas of Whakatane and Kawerau, as a result of permitting the discharge of smoke and pollutants into the air by Tasman Pulp & Paper Limited and by Whakatane Board Mills Limited.

Petitions and Negotiations to Redress Grievances

6.35 BETWEEN 1873 and 1952 members of Ngati Awa petitioned Parliament on numerous occasions for redress of grievances resulting from the facts outlined in paragraphs 3.1 to 6.21. Some of the petitions were considered, others were not. Some petitions were referred to the Native Land Court or to a Commission of Inquiry but favourable recommendations from the Court or from the Commissions were not acted upon. In the case of one Commission of Inquiry, namely the Commission headed by Sir William Sim ('the Sim Commission') appointed in 1926, the Commission was expressly by its terms of reference restrained from inquiring whether the 1866 confiscation of Ngati Awa land was a breach of the Treaty of Waitangi. In any event the Crown failed to redress Ngati Awa grievances.

6.36 FURTHER, Ngati Awa undertook direct negotiations with the Crown at various times between 1920 and 1993 to seek redress for Ngati Awa grievances but to date the Government has failed to provide any or any proper compensation for those grievances.

B. BREACHES OF TREATY OF WAITANGI

1. IN all or any of the following respects the Crown has breached Article 2 of the Treaty of Waitangi:

- (a) By failing, prior to the confiscation, to make any attempt to purchase land from Ngati Awa peaceably.
- (b) By passing the New Zealand Settlements Act 1863 and thereby purporting to legitimise the confiscation of Maori Land.

- (c) By passing the Outlying Districts Police Act 1865 and thereby purporting to legitimise the confiscation of Maori Land.
 - (d) By invading Ngati Awa Lands between August and October 1865 and forcibly destroying and seizing Ngati Awa property and taking Ngati Awa chiefs and warriors prisoner.
 - (e) By confiscating Ngati Awa lands, forests, rivers, swamps and lakes pursuant to the proclamation of 17 January 1866.
 - (f) By unlawfully and for improper purposes, making use of the New Zealand Settlements Act 1863 to confiscate Ngati Awa land.
 - (g) By forcing Ngati Awa to move to, and live on, reserves.
 - (h) By passing the Confiscated Lands Act 1867 the Whakatane Grants Validation Act 1878, and the Richmond Land Sales Act 1870 in an effort to legitimise the (invalid) arrangements made by Wilson relating to the lands confiscated from Ngati Awa.
 - (i) By allowing the disinheritance of Ngati Awa hapu and Iwi members through the process of transferring Ngati Awa lands to individual titles and thereafter promoting the alienation by the individual owners pursuant to:
 - The (invalid) arrangements made by Wilson referred to in paragraphs 6.1 to 6.6 hereof.
 - The rulings of the Compensation Court referred to in paragraph 6.7 hereof.
 - The passing of the legislation referred to in paragraph 6.8(a)(i) hereof.
 - The orders and decisions of the Compensation Courts and the Native Land Courts referred to in paragraph 6.8(a)(ii) hereof.
 - The alienation or taking of land as referred to in paragraph 6.8(b) to (f) hereof.
 - The inducing of Ngati Awa owners to sell their land to the Crown as referred to, for example, in subparagraph (b) of paragraph 6.9 hereof (under the heading ‘The Southern Blocks’) and in paragraph 6.26 hereof.
 - (j) By allowing the Native Land Court to disinherit Ngati Awa from lands outside the confiscation boundary such as the Rotoehu Forest and the Pokohu, Tuararangaia, and Te Haehaenga Blocks as referred to in paragraph 6.9 above.
 - (k) By taking Ngati Awa lands at Matahina, by damming the Rangitaiki River at Matahina and thereby depriving Ngati Awa of a valuable resource, and by destroying sacred burial grounds at Matahina.
 - (l) By taking the Awakeri Hot Springs and the land surrounding those Springs.
 - (m) By passing the Rangitaiki Land Drainage Act 1910 and subsequently taking land in the Rangitaiki swamp from Ngati Awa under that Act in conjunction with the Public Works Act 1908 and the Native Land Act 1909.
 - (n) By allowing the pollution of the air and waters of Ngati Awa.
2. IN all or any of the following respects the Crown has breached Article 3 of the Treaty:
- (a) By conducting an illegal military Court martial of Ngati Awa chiefs and warriors in December 1865.
 - (b) By conducting an unfair and unjust trial of Ngati Awa chiefs and warriors in the Auckland Supreme Court in May 1866 and thereafter executing or imprisoning these chiefs and warriors.
 - (c) By confiscating Ngati Awa Lands.
 - (d) By confiscating Ngati Awa Lands:
 - (i) Without lawful excuse.
 - (ii) By way of unlawful and additional punishment for crimes allegedly committed by Ngati Awa warriors and chiefs (in respect of which crimes Ngati Awa chiefs and warriors were executed and imprisoned).
 - (iii) Without regard to the extent to which or whether in fact the various hapu of Ngati Awa had been involved in the alleged crimes.
 - (iv) For improper and illegal motives.
 - (e) By failing for over 100 years to recognise the grievances of Ngati Awa or to arrange redress or appropriate compensation for those grievances.
3. IN all or any of the following respects the Crown breached its implied duties in relation to the Treaty of Waitangi:
- (a) By ignoring, whenever it suited, the Proclamation of Peace of 2 September 1865.

- (b) By issuing the Proclamation of Martial law on 4 September 1865 in a belated attempt to justify the invasion of Ngati Awa land by Crown forces.
- (c) By passing the Native Rights Act 1865 in a belated attempt to:
 - (i) Justify the imposition of English law on those persons allegedly responsible for the killing of James Fulloon and others.
 - (ii) Justify the taking of Ngati Awa lands.
- (d) By embarking on a course of action designed to destroy the prosperity and wealth of Ngati Awa.
- (e) By illegally seizing the lands of Ngati Awa on the pretext that Ngati Awa had been in rebellion since 1 January 1863 when this was not true.
- (f) By promoting and/or allowing the confiscation of Ngati Awa land and the transfer of Ngati Awa land to individual Maori so as to defeat the legitimate interests of hapu and Iwi members.
- (g) By imposing European land tenure concepts on Ngati Awa lands in preference to Maori concepts of possession or ownership.
- (h) By failing to ensure that Ngati Awa were left with lands sufficient to maintain their mana, self esteem and way of life.
- (i) By failing to honour (or continue to honour) the promise of Sir Donald McLean for a Maori Reserve at Te Putere of approximately 500–600 acres.
- (j) By failing or refusing to return the whare whakairo Mataatua to Ngati Awa.
- (k) By allowing the loss of the riparian rights of the Wairaka Marae.
- (l) By failing to allow Ngati Awa any participation in the financial rewards of the Matahina dam project.
- (m) By failing to create a Maori Reservation upon the whole of Putauaki and/or allowing the planting of forests upon the sacred places of Putauaki.
- (n) By failing to provide proper advice and protection to Ngati Awa in relation to Ngati Awa's contribution to the Tarawera Forest project and in particular failing to ensure that Ngati Awa retained control of its lands and had a fair say in the administration and conduct of the business of Tarawera Forest Limited.
- (o) By failing to redress Ngati Awa grievances.

- (p) By refusing to comply with Crown obligations under the Treaty of Waitangi.

C. PREJUDICIAL EFFECT OF BREACHES OF TREATY

By reason of the facts and matters outlined in paragraphs A4.1 to 6.36 hereof and the breaches of the Treaty of Waitangi appearing in paragraphs B1 to B3 hereof Ngati Awa have been prejudicially affected in all or any of the following respects:

- (a) Loss of their lands, mountains, forests, rivers, swamps and lakes.
- (b) Loss of Te Tino Rangatiratanga.
- (c) Loss of the mana of hapu and Iwi.
- (d) Loss of leaders.
- (e) Loss of sources of food and building materials (such as the Rotoehu Forest and the Rangitaiki swamp area).
- (f) Loss of economic independence and prosperity.
- (g) Loss of water rights, mineral rights and geothermal rights.
- (h) Damage and destruction of the social structure and organisation of whanau, hapu and Iwi.
- (i) Destruction of the traditional system of ownership (customary title) and possession of land and resources.
- (j) The forced dislocation of hapu and the scattering of Ngati Awa people.
- (k) The classification of Ngati Awa from 1866 until the passing of the Te Runanga O Ngati Awa Act 1988 as rebels or tangata hara and, as a consequence, adverse presumptions of guilt against Ngati Awa by relevant Crown officials, Courts and agents and by other Iwi.
- (l) Loss of the mana of Ngati Awa leaders through their loss of control of Ngati Awa land, loss of authority and denial of Te Tino Rangatiratanga and as a consequence the breakdown of the Ngati Awa leadership system.
- (m) Loss of political influence.
- (n) A feeling of shame and spiritual deprivation.
- (o) The arousal of division, dissension and conflict between hapu leading to a breakdown of the alliance within the hapu of the Ngati Awa Iwi.

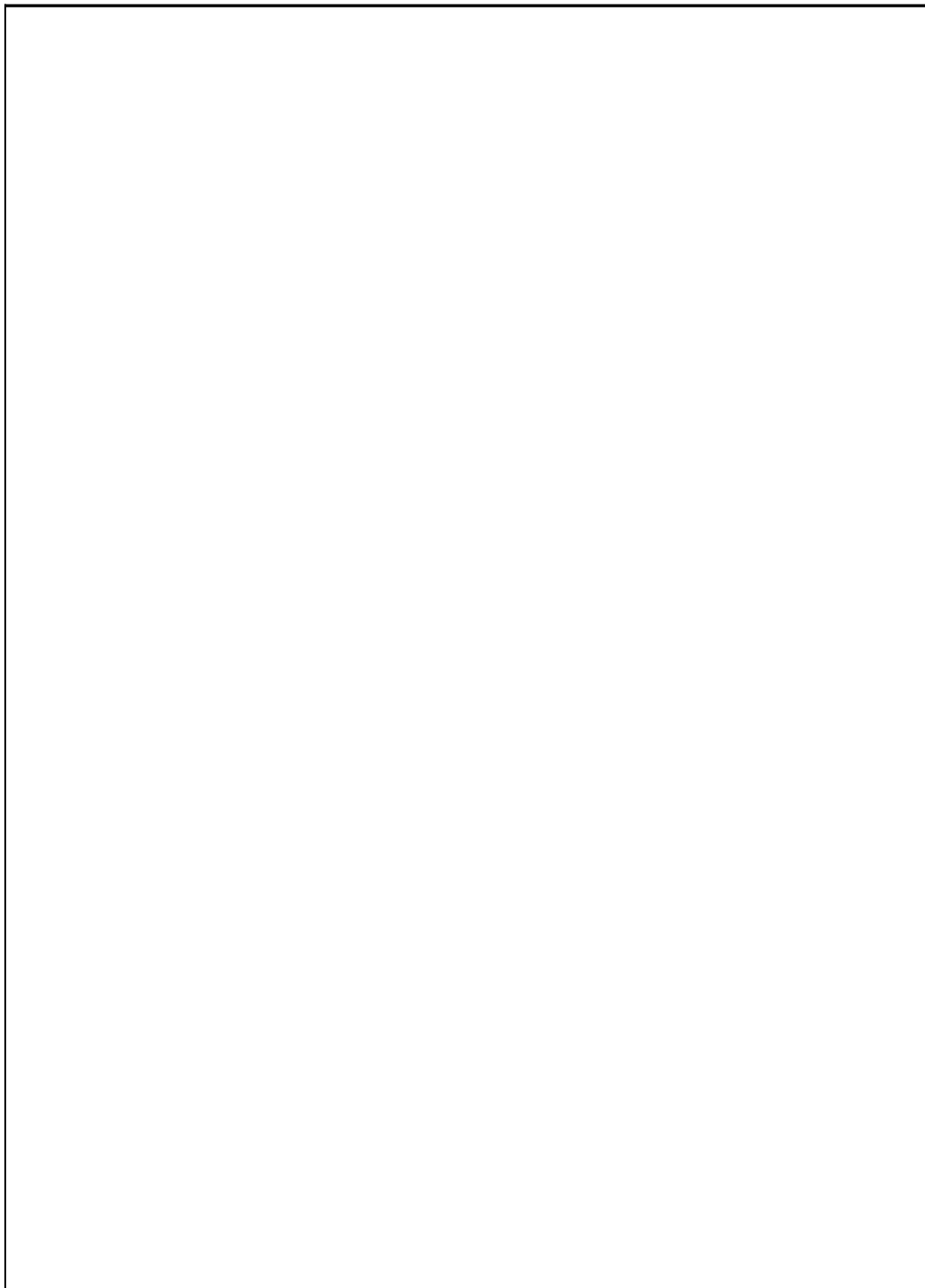
- (p) As a result of all the above matters the imposing of stress, anxiety and trouble upon the whanau of Ngati Awa.
- (q) A reduction in the population of the hapu and Iwi of Ngati Awa.
- (r) Loss of riparian rights; in particular of the Wairaka Marae.
- (s) Loss of the Whare Mataatua.
- (t) Loss of significant sacred and cultural sites and features such as Putauaki, Awakeri Hot Springs, and the burial sites at Matahina.
- (u) Loss of access to and the use of the Rangitaiki River at Matahina.
- (v) Lack of appropriate participation in major projects concerning Ngati Awa lands such as the Rotoehu and Tarawera Forest and the Matahina Dam.
- (w) Pollution of the air and waters of Ngati Awa and consequent loss or deterioration of those resources.
- (d) The restoration of the economic base of Ngati Awa with a view to restoring Ngati Awa to economic independence and prosperity.
- (e) The return of such of the lands and estates, forests, fisheries and other properties including all Crown reserves in the rohe of Ngati Awa as are now in Crown ownership or are otherwise available.
- (f) The transfer of appropriate lands to Ngati Awa of equivalent area and value to those confiscated.
- (g) Appropriate cash compensation for the breaches of the Treaty referred to above.
- (h) The return of the Rotoehu Forest to Ngati Awa.
- (i) The return of Putauaki to Ngati Awa.
- (j) The return of the Mataatua Meeting House to Ngati Awa.
- (k) The return of Awakeri Hot Springs to Ngati Awa.

D. COMPENSATION SOUGHT

THE Claimants seek all or any of the following relief:

- (a) An acknowledgment and apology from the Crown for the breaches of the Treaty of Waitangi outlined above.
- (b) The restoration of the Mana and Mauri of the whanau, hapu and Iwi of Ngati Awa.
- (c) The restoration of Te Tino Rangatiratanga of Ngati Awa.
- (m) Financial compensation to Ngati Awa for the use of the Rangitaiki River in the Matahina Dam project.
- (n) The taking of such steps as are necessary and appropriate to remove (and maintain the removal of) pollution from the air and waters of Ngati Awa.





BEFORE THE WAITANGI TRIBUNAL

IN THE MATTER of The Treaty of Waitangi Act 1975

AND

IN THE MATTER of a claim by ISOBEL FOX, WILLIAM SHUKI SAVAGE, TEMAUNGARANGI TE RIRE, TAI TUKIWAHO TE RIINI, ANTHONY STEVEN OLSEN, ROBERT DAVID SHUSTER and POPATA OSWALD RENATA on behalf of themselves and of the members of the iwi Tuwharetoa Te Atua Reretahi ki Kawerau

SECOND AMENDED STATEMENT OF CLAIM

WE, ISOBEL FOX of Kawerau, WILLIAM SHUKI SAVAGE of Kawerau, TEMAUNGARANGI TE RIRE of Whakatane, TAI TUKIWAHO TE RIINI of Kawerau, ANTHONY STEVEN OLSEN of Cambridge, ROBERT DAVID SHUSTER of Rotorua and POPATA OSWALD RENATA of Matata, for ourselves and on behalf of the iwi and hapu now comprising the Maori people of Tuwharetoa Te Atua Reretahi ki Kawerau

CLAIM to be prejudicially affected or likely to be prejudicially affected by:

1. The Order-in-Council/Proclamation of 17 January 1866 (as subsequently amended by Order-in-Council/Proclamation of 1 September 1866) purporting to confiscate certain lands, estates, forests, fisheries and other properties of the Ngati Tuwharetoa in the Bay of Plenty more particularly described in Schedule A hereto ('the confiscated lands and other properties').
2. The enactment and subsequent implementation in relation to the confiscated lands and other properties of the New Zealand Settlements Act 1863 (as from time to time amended), pursuant to which legislation the aforesaid Orders-in-Council/Proclamations were purportedly made.
3. The passing and implementation of legislation for the purpose of ratifying and/or excluding from challenge in the Courts of law the pur-

ported confiscation of the confiscated lands and other properties and the subsequent dealings without lawful authority in respect thereof by the Compensation Courts and other agents of the Crown, namely the Friendly Natives Contracts Confirmation Act 1866, the New Zealand Settlements Amendment Act 1866 (s 6), the Confiscated Lands Act 1867 and the Richmond Land Sales Act 1870.

4. The Order-in-Council/Proclamation of 12 November 1874 which purported to transfer certain of the confiscated lands and other properties to members of other tribes.
5. The enactment and subsequent implementation of the Confiscated Lands Act 1867, pursuant to which the said Order-in-Council/Proclamation of 12 November 1874 was made.
6. The acts done by the Crown in confiscating the confiscated lands and other properties on or about the 17th January 1866 as aforesaid and in dealing with and disposing of them thereafter contrary to the interests of Ngati Tuwharetoa as the rightful owners of, or possessors of Manawhenua over, the confiscated lands and other properties.
7. The enactment and subsequent implementation of the Native Land Acts of 1862, 1865 and 1877 and the Government Land Purchase Amendment Act 1878, whereby the alienation of

Ngati Tuwharetoa land was enabled or facilitated.

8. The acts done by the Crown subsequent to 17 January 1866 in dealing with and disposing of the confiscated lands and other properties contrary to the interests of Ngati Tuwharetoa as the rightful owners of, or possessors of Manawhenua over, the confiscated lands and other properties, in particular (but without limitation):

8.1 Causing or permitting the alienation from tribal ownership of substantial portions of the confiscated lands later returned under crown grant to individual members of Ngati Tuwharetoa which lands were or ought to have been returned to tribal ownership to be held pursuant to native title or alternatively at the very least held and retained in trust for the iwi or hapu, in particular the Blocks known as Matata Lots 31 to 42 inclusive or substantial portions thereof.

8.2 The confiscation and/or the subsequent alienation of that part of the area of land now known as and comprising the Rotoehu Forest failing within the confiscation boundary declared in the Orders-in-Council/Proclamations of 17 January and 1 September 1866;

8.3 The taking of land and other properties of which Ngati Tuwharetoa were then the rightful owners or held Manawhenua over in the area known as the Rangitaiki Swamp by means of the passing and subsequent implementation of the Public Works Act 1908, the Native Lands Act 1909 and the Rangitaiki Land Drainage Act 1910.

AND CLAIM that the foregoing Acts or Ordinances, Orders-in-Council, Proclamations, policies and practices and acts and omissions were or are inconsistent with the principles of the Treaty of Waitangi.

Further particulars of claim

9. The Order-in-Council/Proclamation of 17 January 1866 recited in part:

‘Whereas the Governor in Council is satisfied that certain Native Tribes and sections of Native Tribes, having respectively as their property or in their possession, lands situate within the district described in the Schedule hereunder written, have, since the first day of January, 1863, been engaged in rebellion against Her Majesty’s authority’.

10. The allegation that the Ngati Tuwharetoa (being one of the ‘certain Naive Tribes and sections of Native Tribes’ whose lands were confiscated) had been engaged in rebellion against Her Majesty’s authority was false and without foundation.

11. The purported confiscation of the confiscated lands and other properties was contrary to the guarantees of the Treaty of Waitangi and was carried out in excess of the authority of, and/or for improper purposes not authorised by, the New Zealand Settlements Act 1863; in breach of the provisions of the New Zealand Settlements Act 1863; in breach of the proper principles of fair dealing as between the Crown and the Maori people; and without affording Ngati Tuwharetoa a hearing or other due process of law.

12. Thereafter the Crown has ignored and failed to act on the rightful claims of Ngati Tuwharetoa to the confiscated lands and other properties and, by means of the legislation, Orders-in-Council, Proclamations, policies, practices and acts and omissions referred to in paragraphs 1–8 inclusive hereof, has wrongfully appropriated and as the case may be wrongfully retained the lands and other properties, or wrongfully alienated them to other persons.

13. The foregoing Acts of Parliament, Orders-in-Council/Proclamations and acts and omissions of the Crown have caused loss and damage to Ngati Tuwharetoa, and have offended and continue to offend against the rights, title, mana and mauri of Ngati Tuwharetoa in respect of the confiscated lands and other properties.

THE TRIBUNAL is asked to recommend (pursuant to Sections 5, 8HB(1)(b) and 8HC of the Treaty of Waitangi Act 1975 and Sections 36 and 40 of the Crown Forest Assets Act 1989 as appropriate) as follows:

- (a) That the Orders-in-Council/Proclamations referred to in paragraphs 1 and 4 hereof be rescinded;
- (b) That the Crown acknowledge that the confiscation of Maori land in the Bay of Plenty by means of the Orders-in-Council/Proclamations referred to in paragraph 1 hereof and in particular the confiscation of the lands and other properties of Ngati Tuwharetoa was wrongful, without proper

- legal or factual foundation, and contrary to the Treaty of Waitangi;
- (c) That the rightful ownership by Ngati Tuwharetoa of the confiscated lands and other properties together with all other rights and interests recognized by the Treaty of Waitangi in respect of the confiscated lands and other properties be recognised and confirmed, and be restored to the Maori people of Tuwharetoa Te Atua Reretahi ki Kawerau by appropriate amendments to existing legislation and to other public documents and practices;
- (d) That the lands now known as and comprising the Rotoehu Forest (being the lands more particularly described in Schedule B hereto) be returned and/or transferred in whole or alternatively in part to the ownership of Ngati Tuwharetoa on such terms and conditions as the Tribunal considers appropriate;
- (e) That in respect of the lands known as the Rotoehu Forest, compensation be awarded to the Maori people of Tuwharetoa Te Atua Reretahi ki Kawerau in accordance with the First Schedule to the Crown Forest Assets Act 1989;
- (f) That the Crown provide to the Maori people of Tuwharetoa Te Atua Reretahi ki Kawerau appropriate compensation, financial and otherwise, for the wrongful confiscation of the confiscated lands and other properties and/or the subsequent wrongful dealings by the Crown in respect thereof, and for the consequent injury and offence to the rights title mana and mauri of Ngati Tuwharetoa and the present-day Maori of Tuwharetoa Te Atua Reretahi ki Kawerau; for the disruption of Ngati Tuwharetoa and their iwi and hapu; for the social dislocation which has occurred as a consequence of the wrongful confiscation of and subsequent dealings with the confiscated lands and other properties; for the taking of measures dealing with the social issues of unemployment and loss of mana; and for the education and training of tribal members;
- (g) That the appropriate method or methods of providing such compensation be as determined in detail by the Tribunal;
- (h) That the claimants receive compensation for the costs of preparing, submitting and presenting the present claims;

- (i) Such other relief as the Tribunal considers appropriate.

PERSONS affected by this claim and who should have notice of it are:

The Attorney-General
 The Minister of Maori Affairs
 Forestry Corporation of New Zealand Limited
 Landcorp
 The Department of Conservation
 The Whakatane District Council
 The Kawerau Borough Council
 The claimants in WAI 46
 The claimants in WAI 275

THIS CLAIM amends and replaces the claim as made herein by ISOBEL FOX and WILLIAM SHUKI SAVAGE herein dated 27 July 1987. The claimants reserve the right further to amend this claim.

NOTICES to the claimants should be sent to the address for service set out below.

DATED this 16th day of October 1995

SIGNED

Counsel for Isobel Fox

Counsel for William Shuki Savage

Temaungarangi Te Rire

Anthony Steven Olsen

Robert David Shuster/
 Counsel for Robert David Shuster

Popata Oswald Renata

Tai Tukiwaho Te Riini

SCHEDULE A

THE CONFISCATED LANDS

All those lands of the Ngati Tuwharetoa purportedly confiscated by means of the Order-in-Council/Proclamation of 17 January 1866 being all (or in the alternative, part) of the area of land from Wahieroa near Okorero, the outlet of the Rangitaiki River; south west to the eastern peak of Putauaki Te Matapihi Orehua across to the peak on the western side Te Tauru Oterangi; west to Maungawhakanana; then north through the Rotoma Lake to the outlet of the Waitahanui Stream at Otamarakau.

being Lot 2 DPS 35012, Lots 3 and 4 DPS 35013, Lots 5 and 6 DPS 35014, Lot 1 DPS 57549 and Lots 1 and 2 DPS 57553

Rotoehu West Block

7023.9571 hectares more or less situated in the Land District of South Auckland being Lot 7 DPS 35014, Lot 1 DPS 45081, Lot 1 DPS 53628, Lot 1 DPS 53629, Lot 1 DPS 53631, Lots 1, 2 and 3 DPS 53632, Lot 1 DPS 57544, Lots 1, 2 and 3 DPS 57545, Lot 1 DPS 57546, Lot 1 DPS 57547, Lot 1 DPS 57548, Lot 1 DPS 57550, Lot 1 DPS 57551, Lot 1 DPS 57552, Lot 1 DPS 57554, Lot 1 DPS 57555, Lots 1 and 2 DPS 57645, Lot 1 DPS 64877 and Lot 1 DPS 65735

SCHEDULE B

THE ROTOEHU FOREST

Rotoehu East Block

1495.0960 hectares more or less situated in the Land Registration District of South Auckland

Together with the land described as Section 21 so Plan 36090 and part Section 22 so Plan 36090.