

APPENDIX I

STATEMENTS OF CLAIM

IN THE WAITANGI TRIBUNAL

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF A claim by Toko Renata Te Taniwha and
the Hauraki Maori Trust Board

STATEMENT OF CLAIM

DATED the 19th day of June 1998

The claimants say:

1. The first named claimant is the Chairman of the second named claimant and the second named claimant is a Maori Trust Board under the Maori Trust Boards Act 1955 having been established by the Hauraki Maori Trust Board Act 1988.
2. For the purposes of this claim they together represent the iwi known as Ngai Tai, Ngati Hako, Ngati Hei, Ngati Maru, Ngati Paoa, Ngati Porou ki Harataunga ki Mataora, Ngati Pukenga ki Waiau, Ngati Rahiri Tumutumu, Ngati Tamatera, Ngati Tara Tokanui, Ngati Whanaunga and Patukirikiri (*the Hauraki iwi*).
3. The Hauraki iwi are tangata whenua of the Hauraki Gulf (*Tikapa Moana*).
4. Tikapa Moana is a mahinga kai and a taonga of Hauraki iwi. Hauraki iwi are kaitiaki of Tikapa Moana.

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5. As tangata whenua Hauraki iwi have mana whenua and mana moana over the shores and waters of Tikapa Moana and hold customary title in respect of the foreshore and seabed of Tikapa Moana.

6. By application dated 28 January 1998, Hauraki Maori Trust Board has applied to the Maori Land Court on behalf of Hauraki iwi for recognition of Hauraki iwi's customary title to a significant portion of the foreshore and seabed of Tikapa Moana (a copy of the application is annexed and marked 'A').

7. The Hauraki Maori Trust Board has also lodged a claim with the Waitangi Tribunal on behalf of Hauraki iwi seeking recognition of the customary rights of Hauraki iwi to the foreshore and seabed of Tikapa Moana (Wai 100).

8. The Minister of Conservation has advised the Hauraki iwi and the claimants that it intends to introduce special legislation to turn Tikapa Moana into a national marine park.

9. The introduction of special legislation to turn Tikapa Moana into a national marine park is likely to prejudice the claim of Hauraki to the Foreshore and Seabed and thereby the claimants and Hauraki iwi.

Relief Sought

A. A recommendation that any special legislation introduced to constitute Tikapa Moana as a national marine park will be in breach of the Treaty of Waitangi if it in any way affects the customary rights claim of Hauraki to the Foreshore and Seabed.

B. Costs.

‘A’

APPLICATION FOR AN INVESTIGATION OF MAORI CUSTOMARY LAND

TE TURE WHENUA MAORI ACT 1993, SECTIONS 18, 131 AND 132

IN THE MAORI LAND COURT OF NEW ZEALAND

WAIKATO-MANIAPOTO DISTRICT

IN THE MATTER OF AN APPLICATION BY HAURAKI MAORI TRUST BOARD ON
BEHALF OF HAURAKI IWI NAMELY NGATI HAKO, NGATI HEI,
NGATI MARU, NGATI PAOA, PATUKIRIKIRI, NGATI POROU KI
HARATAUNGA KI MATAORA, NGATI PUKENGA KI WAIUAU,
NGATI RAHIRI-TUMUTUMU, NGAI TAI, NGATI TAMATERA,
NGATI TARA TOKANUI AND NGATI WHANAUNGA

Application is hereby made for the following orders:

1. An order under ss131 and 18(h) determining and declaring that the land as defined in Schedule One hereof (*‘the land’*) is customary Maori land; or
2. An order under s18(i) declaring that the land is held by the Crown in a fiduciary capacity in favour of all or any of the applicants; and
3. An order under s132 that an investigation be carried out as to the relative interests of the applicants in the land; and
4. Costs; and
5. Such other orders as the Court thinks just.

UPON THE GROUNDS:

1. The applicant is Hauraki Maori Trust Board on behalf of Hauraki Iwi as set out in s4(2) of the Hauraki Maori Trust Board Act 1988 namely Ngati Hako, Ngati Hei, Ngati Maru, Ngati Paoa, Patukirikiri, Ngati Porou ki Harataunga ki Mataora, Ngati Pukenga ki Waiiau, Ngati

THE HAURAKI GULF MARINE PARK REPORT

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Rahiri-Tumutumu, Ngai Tai, Ngati Tamatera, Ngati Tara Tokanui and Ngati Whanaunga. These iwi are, and at all relevant times were tangata whenua in respect of the region generally known as Hauraki. This region includes within it the land referred to in Schedule One hereof.

2. The land was, in 1840, customary Maori land of some or all the applicants and was held by some or all of them in accordance with tikanga Maori.

3. The customary Maori title to this land has not been relinquished by the applicants or in any other manner extinguished since that time.

4. The land remains customary Maori land of some or all of the applicants at the date of this application and continues to be held by them in accordance with tikanga Maori.

5. In the alternative if the land is found by the Court to be land of the Crown then the applicants never consented to the abrogation of their title by the Crown and by the principles in *R v Symonds*, the Crown holds such title as fiduciary on behalf of the applicants.

6. It is appropriate in those circumstances for the Court to determine and declare that the land is Maori customary land and to order an investigation into the particular owners thereof and their relative interests therein.

AND upon the further grounds set out in the affidavit of Toko Renata Te Taniwha and to be provided in evidence before this Court in support of this application.

This application is made in reliance on sections 18, 131 and 132 Te Ture Whenua Maori Act 1993 and Rule 108 of the Maori Land Court Rules 1994.

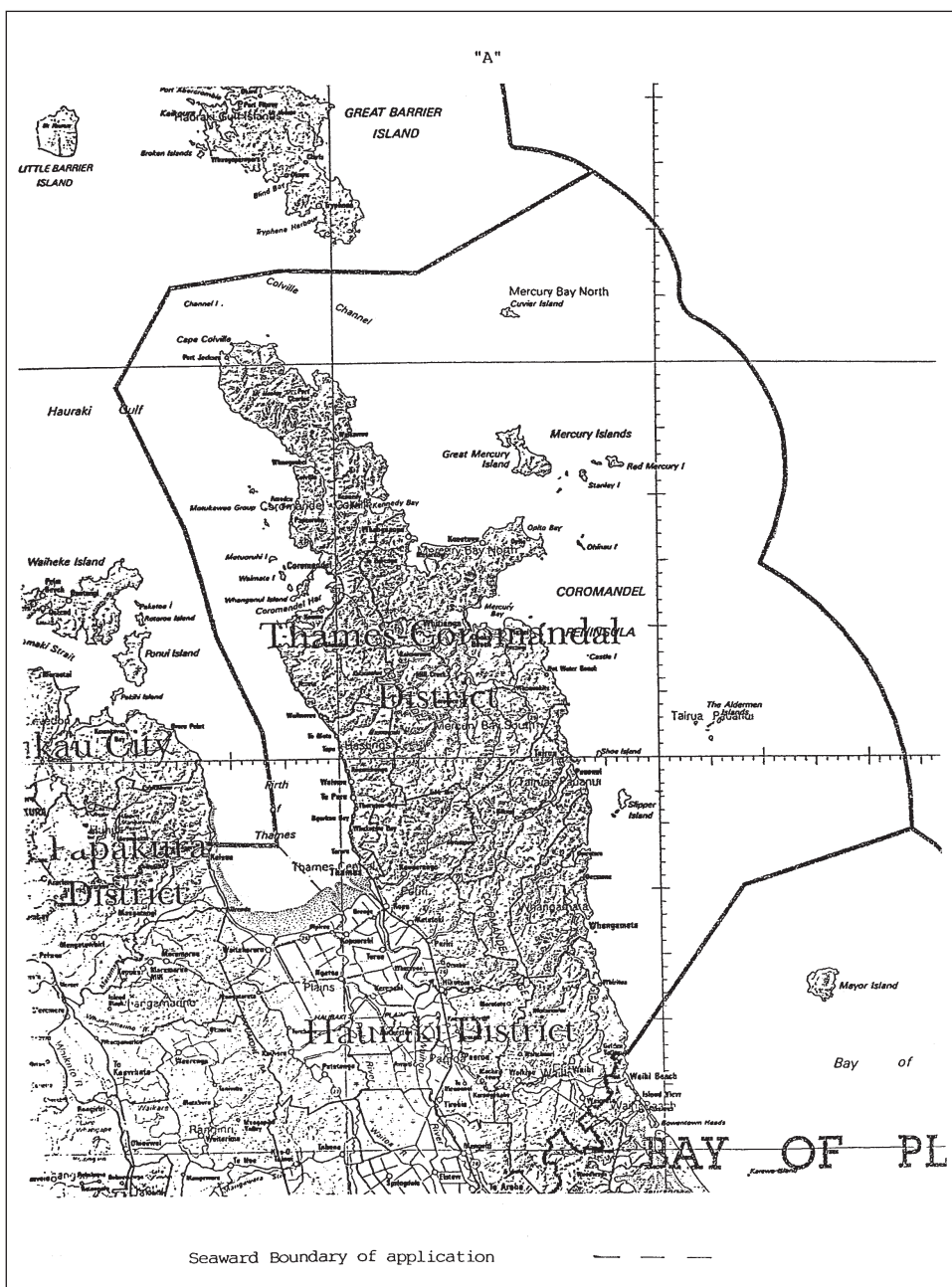
DATED at AUCKLAND this 28th day of January 1998

JV Williams/LG Powell
Counsel for the applicants

SCHEDULE ONE

For the purposes of this application *'the land'* means:

1. All that land having as its landward boundary mean high water mark and having as its seaward boundary a line running 318° from the middle of a baseline drawn across the mouth of the Piako River to the point where such line intersects with the seaward boundary of the region administered by the Waikato Regional Council ('the Regional Boundary') and thereafter following the line of the regional boundary to the point on the eastern side of the Coromandel Peninsula at which the regional boundary intersects the mean high water mark, as delineated out on the map annexed hereto and marked 'A'.



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Note: The first amended statement of claim was filed on 20 June 2000 and this second amended statement of claim was filed on 1 February 2001. The two documents are identical, except for the addition of paragraph 10.3, and subparagraphs (b) and (e) under the heading 'Relief Sought'. Application A was also appended to this statement of claim (see pp 49–51).

IN THE WAITANGI TRIBUNAL

WAI 728

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF A claim by Toko Renata Te Taniwha and
the Hauraki Maori Trust Board

SECOND AMENDED STATEMENT OF CLAIM

Dated 1 February 2001

The claimants say

1. This claim is lodged by:

1.1 Toko Renata Te Taniwha; and

1.2 the Hauraki Maori Trust Board, being a Maori Trust Board under the Maori Trust Boards Act 1955 and having been established by the Hauraki Maori Trust Board Act 1988.

2. This claim is lodged on behalf of the iwi known as Ngai Tai, Ngati Hako, Ngati Hei, Ngati Maru, Ngati Paoa, Ngati Porou ki Harataunga ki Mataora, Ngati Pukenga ki Waiau, Ngati Rahiri Tumutumu, Ngati Tamatera, Ngati Tara Tokanui, Ngati Whanaunga and Patukirikiri ('*Hauraki iwi*').

3. The claimants say that they and their tupuna have been, are, and are likely to be, prejudicially affected by the legislation and the policies, practices, acts or omissions of the Crown which were and are inconsistent with the principles of the Treaty of Waitangi as further set out in this amended statement of claim.

The Claim

4. The Hauraki iwi are tangata whenua of Tikapa Moana (also known as the Hauraki Gulf).

5. Tikapa Moana is a mahinga kai and a taonga of Hauraki iwi. Hauraki iwi are kaitiaki of Tikapa Moana.

6. As tangata whenua Hauraki iwi have mana whenua and mana moana over the shores, lands, and waters of Tikapa Moana and hold customary title in respect of the foreshore and seabed of Tikapa Moana.

Particulars

6.1 By application dated 28 January 1998, the Hauraki Maori Trust Board has applied to the Maori Land Court on behalf of Hauraki iwi for recognition of Hauraki iwi's customary title to a significant proportion of the foreshore and seabed of Tikapa Moana (a copy of the application is annexed and marked 'A').

6.2 The Hauraki Maori Trust Board has also lodged a claim with the Waitangi Tribunal on behalf of Hauraki iwi seeking recognition of the customary rights of Hauraki iwi to the foreshore and seabed of Tikapa Moana (WAI 100).

7. Pursuant to article 2 of the Treaty of Waitangi, Hauraki Iwi were guaranteed tino rangatiratanga over, and full exclusive and undisturbed possession of, their lands and taonga, including Tikapa Moana.

8. As a consequence of the guarantee set out in paragraph 5 above, the Crown was and remains under an obligation:

8.1 To actively protect the exercise by Hauraki Iwi of tino rangatiratanga and kaitiakitanga in respect of Tikapa Moana.

8.2 To actively protect and legally recognise customary rights of ownership held by Hauraki Iwi in respect of Tikapa Moana.

9. In breach of the Principles of the Treaty of Waitangi and in particular the obligations in paragraphs 7 and 8 hereto, the Crown has enacted the Hauraki Gulf Marine Park Act 2000 which:

9.1 Implements a management regime which is inconsistent with the kaitiakitanga responsibilities and the exercise of tino rangatiratanga by Hauraki Iwi (Part 1).

9.2 Fails to give effective recognition to the principles of the Treaty of Waitangi (s6).

9.3 Establishes a Hauraki Gulf Forum which

(a) Does not provide for adequate representation for Hauraki Iwi (s16); and

(b) Fails to protect the interests of Hauraki Iwi (Part 11).

(c) Fails to allow Hauraki Iwi to participate effectively.

9.4 Fails to give adequate recognition to the interests of Hauraki Iwi.

10. In further breach of the principles of the Treaty of Waitangi and in particular the obligations in paragraphs 7 and 8 hereto, the Crown has implemented the Hauraki Gulf Forum the Hauraki Gulf Marine Park and:

10.1 Appointed iwi representatives to the Hauraki Gulf Forum without support of Hauraki iwi.

10.2 Proposed a logo for the Hauraki Gulf Forum without consultation with, and which is offensive to, Hauraki iwi.

10.3 Administered the Marine Park as though the foreshore and seabed within the Marine Park boundary is a part of the park notwithstanding that the ownership has not been determined and nothing in the Hauraki Gulf Marine Park Act 2000 changes or affects the ownership of the foreshore and/or seabed.

11. As a result of the breaches set out in paragraph 9 and 10 hereto Hauraki Iwi have been prejudiced in that they have:

11.1 Been denied the right to exercise tino rangatiratanga in respect of Tikapa Moana; and

11.2 Been denied the right to exercise kaitiakitanga in respect of Tikapa Moana.

11.3 Suffered and continue to suffer a challenge to their mana in respect of Tikapa Moana.

Relief Sought

(a) A finding that the Hauraki Gulf Marine Park Act 2000 breaches the principles of the Treaty of Waitangi by failing to adequately protect the customary and other interests of Hauraki iwi in Tikapa Moana.

(b) A finding that the Crown's decision to treat the foreshore and seabed of Tikapa Moana as part of the Hauraki Gulf Marine Park breaches the principles of the Treaty of Waitangi.

(c) A recommendation that Hauraki iwi be given the opportunity to fully participate in a review of the Hauraki Gulf Marine Park Act 2000 in order to adequately protect the interests of Hauraki iwi in Tikapa Moana.

(d) A recommendation that the Crown should take steps to prevent any further implementation of the provisions of the Hauraki Gulf Marine Park Act 2000 until it has been repealed or amended so as to be consistent with the principles of the Treaty of Waitangi.

(e) A recommendation that the Crown desist from treating the foreshore and seabed of Tikapa Moana as part of the Hauraki Gulf Marine Park pending the outcome of the application by Hauraki iwi for recognition of customary ownership of the foreshore and seabed.

(f) A recommendation that Hauraki iwi are provided with all necessary resources and funding necessary in order to fulfill their duties as kaitiaki in respect of Tikapa Moana including where appropriate funding for legal proceedings on issues affecting Tikapa Moana.

(g) Any other recommendations the Tribunal thinks fit.

(h) Costs.