

## CHAPTER 1

# INTRODUCTION

## 1.1 INTRODUCTION

### 1.1.1 Particulars of the claim

**This claim concerns the circumstances surrounding the construction of the Turangi township in the 1960s by the Crown (see figs 1, 2). The primary purpose of the town was to house the several thousand construction workers and related service people necessary to carry out the Tongariro power development scheme over several stages. The new township was constructed on ancestral land of the Ngati Turangitukua hapu of Ngati Tuwharetoa.**

**More particularly, the claim concerns:**

- **the process by which the hapu were alienated from much of their land in the period between 1964 and 1983;**
- **the assurances and undertakings made to Ngati Tuwharetoa by Crown officials which persuaded the owners to agree in principle with the Crown's proposal to build the town within their rohe;**
- **the alleged failure by the Crown to honour many of these promises, including those relating to the amount of freehold land which would be taken and the return of upwards of 200 acres of industrial land, which was to have been leased by the Crown and returned to the owners after 10 to 12 years;**
- **the use of the Turangi Township Act 1964 and the Public Works Act 1928 to effect the separation of the people from their land;**
- **the inadequacies of the compensation provisions in the Public Works Act 1928 and the absence in that Act of any requirement for surplus land to be returned to Maori owners;**
- **the absence of any statutory or other requirement that, before compulsorily taking any Maori land, the Crown ensure that no alternative non-Maori land was available for the township;**
- **the absence of any statutory or other requirement that, before acquiring the freehold of any Maori land, the Crown ensure that all alternative forms of tenure, such as leasehold, were exhausted;**
- **the actions of the Ministry of Works in relation to the tangata whenua, including its alleged failure to consult adequately with local people at all stages of the development and construction of the township on their land and to have regard**

**for the mana and sensibilities of the tangata whenua, especially the older people;  
and**

- **the destruction and desecration of wahi tapu of Ngati Turangitukua during the construction of the town.**

#### **1.1.2 The claimants**

**The claim in its final form is brought by Mahlon Kaira Nepia on behalf of the Ngati Turangitukua hapu of Ngati Tuwharetoa. The claimants' turangawaewae is located at the southern end of Lake Taupo, in and about the present township of Turangi. Their principal marae is Hirangi Marae, located in the township of Turangi.**

### **1.2 DEVELOPMENT OF THE CLAIM**

#### **1.2.1 First claim relating to Turangi township**

**On 3 January 1990, a claim dated 25 December 1989 was received by the Waitangi Tribunal. It was made by Mahlon Kaira Nepia on behalf of himself and Arthur Lancaster Te Takinga Grace of the Ngati Turangitukua hapu of Ngati Tuwharetoa. The claimants sought the return of certain properties in Turangi which they said the Crown had agreed to return. These comprised vacant industrial land formerly occupied by a Ministry of Works depot; a Turangi office block; the Turangi refuse block; a recreational reserve; and a block of land, declared Crown land under the Land Act 1948, which was in the process of subdivision.**

**Further communications in support of the claim, dated 31 December 1989, 1 January 1990 (a copy of a letter to the Prime Minister), and 2 January 1990, were received by the Tribunal. These concerned the prospective sale by the Crown in February 1990 of the former Ministry of Works project office. The office was on land which, it was said, the Crown had undertaken to return. On 10 January 1990, in a further letter from the claimants,**

east

**Figure 1: Field sketch of the Turangi township. View from the hills to the east of the township.**

**grievances were noted concerning the Crown's acquisition of tapu land and the inadequacies of the statutory provisions for compensation.**

**In a letter dated 6 February 1990, the claimants complained about the provisions of the Turangi Township Act 1964 which, it was said, permitted the Crown to take land under the Public Works Act 1928 without consultation with the Maori owners and to adjust township boundaries, also without notice to, or the consent of, the people.**

### **1.2.2 Request for urgency**

**On 9 December 1991, Mahlon Nepia, for the Ngati Turangitukua claimants, wrote to the Tribunal requesting an urgent hearing of the claim concerning the Turangi township. It was prompted by a recent offer the Crown had made to the previous owners of the land on which the Ministry of Works' project office building was built. This had been the subject of earlier correspondence when the property was proposed to be auctioned in February 1990. That sale was abandoned by the Crown, which was now offering the property back to the previous Ngati Turangitukua owners for \$450,000, plus GST. This was land that the claimants said the Crown had promised to return, being part of the industrial area which the Crown undertook it would lease for 10 to 12 years and then return to the owners.**

**As a consequence of this application on 3 March 1992, the Tribunal commissioned John Koning to provide an exploratory report on the background to any Crown undertakings concerning the leasing and return of land to the Ngati Turangitukua owners. The report (A1) was received in June 1992 and was released to the parties.**

### **1.2.3 Amended statement of claim**

**On 20 August 1992, Mahlon Nepia filed an amended statement of claim with the Tribunal on behalf of Ngati Turangitukua. The claimants, having considered the Koning report, brought together the various grievances referred to in earlier claims and in supporting correspondence with the Tribunal.**

### **1.2.4 Urgency granted**

**On 26 July 1993, the Tribunal, in response to a further application for urgency, convened a conference of the claimants and the Crown to consider whether an urgent hearing should take place. The claim, Wai 84, had previously been grouped under claim Wai 367, which included claims affecting Lake Taupo and the southern Taupo area. The Tribunal directed that a separate record be constituted for Wai 84, which would be confined to claims related to the Turangi township.**

**At a conference held on 18 August 1993, the Tribunal was advised that the urgent inquiry sought was in respect of the Turangi township lands only. After hearing the parties, the Tribunal decided that a case for an urgent hearing had been established, principally on the grounds that alienations of land were proceeding despite the objections of the claimants and sacred sites were affected.**

**At a conference with claimant counsel and the Crown on 2 December 1993, it was established that the claim for which urgency had been accorded related both to the way in which the Public Works Act 1928 had been used to acquire the land for the Turangi township and to the leasing arrangements for part of this land, to which, it was claimed, the Crown had not adhered.**

### **1.2.5 Further amended statement of claim**

**On 22 December 1993, in response to a direction from the Tribunal, claimant counsel filed a new comprehensive statement of claim. This contained numerous allegations of Treaty breaches by the Crown in relation to the construction of the township on the claimants' land. This became the substantive statement of claim, and is reproduced as appendix I. Unless otherwise indicated, references in this report refer to this statement of claim.**

**All the allegations are considered in the course of this report. In summary, it was claimed that:**

## *Introduction*

- **The legislation under which the Ngati Turangitukua lands were taken is inconsistent with the principles of the Treaty of Waitangi.**
- **The legislation should not have been employed to take the land by compulsory purchase without other sites and other landholding mechanisms being fully explored.**
- **The Crown acquired more land than it had undertaken it would take, and failed to honour its undertaking to return leased land.**
- **Where land was not compulsorily acquired, Crown actions often resulted in a reduction in the land's use and value.**
  
- **The Crown's dealings with the Ngati Turangitukua people were characterised by breaches of its Treaty duty to consult, to honour its undertakings, and to act in the spirit of partnership and with the utmost good faith. As a consequence, the Crown caused the claimants, both individually and jointly, to experience loss of land, distress, inconvenience, expense, and a loss of the mana that is rightly theirs as tangata whenua of these Turangi lands.**

### **1.2.6 Remedies sought**

**The remedies sought by the claimants are:**

- (a) an immediate recommendation that the Crown and its agencies refrain from the further sale of any land within the claim area;**
- (b) the return to the claimants of the remaining Crown land without payment;**
- (c) compensation for the owners of land whose value and use has been adversely affected by the Crown's actions and for those landowners who were inadequately compensated for the compulsory acquisition of their land;**
- (d) the reimbursement of the claimants for their legal costs, valuation expenses, and disbursements;**
- (e) recommendations as to the matters affecting the claimants, in respect of which they should be fully consulted by the Crown and other agencies in future;**

- (f) compensation for land taken which cannot now be returned;**
- (g) compensation for trauma, humiliation, loss of enjoyment of life, and associated suffering; and**
- (h) compensation for the lost opportunity to develop their land and establish an economic base.**

The last four remedies were sought in a further statement of claim, dated 1 March 1994 (see app I).

#### **1.2.7 Application for the return of State-owned enterprise land**

**On 23 August 1994, the claimants applied to the Tribunal for an order that:**

**The Tribunal include in its recommendation under Section 6(3) of the Treaty of Waitangi Act 1975 Wai 367, a recommendation that any land or interest in land vested in or transferred to a state enterprise under the State-Owned Enterprises Act 1986 and covered by this claim ('the Land') be returned to Maori ownership, in particular to the Ngati Turangitukua hapu.**

## *Introduction*

### **1.3 REPORTS COMMISSIONED BY THE TRIBUNAL**

**In addition to the exploratory report which the Tribunal commissioned from John Koning, the Tribunal commissioned Tarah Nikora to collate a document bank of all documents referred to in the Koning report (A7–10). The Tribunal also commissioned Paul Hamer, a Tribunal research officer, to prepare a background report on the Tokaanu development scheme. This report (B12) provided a picture of the activities of Ngati Turangitukua in the Turangi area prior to the advent of the Tongariro power project in 1964.**

**These commissioned reports were subsequently produced in evidence before the Tribunal.**

#### **1.4 WHEN AND WHERE THE CLAIM WAS HEARD**

**The first hearing of the claim took place at Hirangi Marae in Turangi between 5 and 8 April 1994. Prior to the hearing, public notice was given and, in addition, notice was sent to interested persons and bodies. Opening submissions were presented by claimant counsel. The claimants were represented by Carrie Wainwright and Sarah Giles. Camilla Owen, assisted by Andra Mobberley, appeared for the Crown. At this hearing, extensive evidence was given by a wide range of Ngati Turangitukua whanau. These were the Asher, Te Rangi, Ngaumu, Church, Duff, Hallett, Rihia, Kumeroa, Rota, Grace, Rawhiti Rangataua, and Smallman whanau. Rangi Biddle also gave evidence (see apps II, III). In addition, valuation evidence was given by William Cleghorn and sociological evidence by Mary-Jane Rivers. The report by John Koning was admitted in evidence, as was information from the Maori Land Court relating to Ohuanga North 5B2C2 and various areas of freehold land.**

**The second hearing took place at the Bridge Fishing Lodge in Turangi between 5 and 8 September 1994, when Ms Wainwright and Ms Giles appeared for the claimants. Ms Owen and Briar Gordon appeared for the Crown. Extensive evidence was called on behalf of the Crown from David Alexander, an environmental and**

planning consultant, and Stephanie McHugh, a historian. In addition, the report of Paul Hamer was received in evidence.

The third hearing was held at Hirangi Marae between 26 and 28 October 1994, when the Tribunal heard final submissions from claimant and Crown counsel.

## **1.5 FINDINGS AND RECOMMENDATIONS**

Chapter 21 contains an overview of the claim and the findings and conclusions of the Tribunal. Also in that chapter, after referring briefly to the question of remedies and the status of the many ancillary claims, we propose a negotiated settlement between the claimants and the Crown.

In chapter 22, we bring together our formal findings of Treaty breaches by the Crown, some 13 in number. In view of our proposal for a negotiated settlement, our recommendations are confined at this stage to proposals for amendments to the Public Works Act 1981.