

APPENDIX I

STATEMENTS OF CLAIM

Waitangi Tribunal

Claim Wai 367

CONCERNING The Treaty of Waitangi Act 1975

AND A claim by Mahlon Kaira Nepia on behalf
of Ngati Turangitukua of Ngati Tuwharetoa tribe

FURTHER AMENDED STATEMENT OF CLAIM

1. The claimants are the Ngati Turangitukua hapu of the Ngati Tuwharetoa tribe. 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, which is located in the township of Turangi.

2. The claimants have been prejudicially affected in their capacity as former Maori owners, descendants of former Maori owners, or current Maori owners of lands in the Turangi area. The lands at issue are coloured pink and green on the Claim Map (Document A5 in the Tribunal's Record of Inquiry).

3. The lands coloured pink on the Claim Map were acquired by the Crown between 1965 and 1983 pursuant to the Turangi Township Act 1964. The land was taken for the purpose of the Tongariro hydro-power development project ('the Project') and establishment of the Turangi township ('the Town'). Much of the land has now been sold by the Crown, but the claimants seek to prevent the sale of further land which they consider is rightly theirs.

4. The lands coloured green on the Claim Map remain in Maori ownership. The claimants' interests in these lands have been prejudicially affected because the works associated with the Project and establishment of the Town have had a detrimental effect on the land, limiting the use that can be made of it by current owners and lessees for farming and forestry purposes.

5. In particular, the claimants have been prejudicially affected by:

(1) The following Acts of the Crown:

(a) the Public Works Act 1928; and

(b) the Turangi Township Act 1964;

in that

(i) both Acts were and are fundamentally inconsistent with the basic guarantee given in Article the Second of the Treaty of Waitangi that Maori could keep their land until such time as they wished to sell it at a price agreed with the Crown;

(ii) the Turangi Township Act 1964 permitted the Crown to acquire land compulsorily without direct consultation with the Maori land owners thus contravening the Crown's Treaty duty to act in good faith and consult with the Treaty partner in respect of matters affecting them;

(iii) the Turangi Township Act 1964 further breached the principles of the Treaty by excusing the Ministry of Works from the notice requirements of section 22 and section 23 of the Public Works Act 1928.

(2) The following policies and practices adopted by the Crown:

(a) the policy of taking Maori Land for the establishment of public works, and in particular the policy of taking such land without first ensuring

(i) that no non-Maori land was available as an alternative;

(ii) that all practicable alternatives to purchasing the land, including the alternative of taking a leasehold interest in the land required, had been exhausted; and

(iii) that provision existed for the land, when no longer required for the public work for which it was taken, to be returned to its Maori ownership at the earliest possible opportunity and with least cost and inconvenience to those Maori owners; and

(b) the policy decision to site the Tongariro Power Project ('the Project') and the Turangi Township ('the Town') in their current location when other locations were available which did not involve the wholesale taking of Maori land.

(3) The following acts and omissions on the part of the Crown:

(a) failure on the part of the Crown to honour undertakings that were made to Maori land owners by the Ministry of Works which amounted to terms and conditions upon which those owners agreed to sell the initial 700 acres of land at Turangi;

(b) the compulsory acquisition by the Crown of more land than:

(i) Maori land owners were told at the commencement of the Project (when their agreement to the Project proceeding was given) would be required; or

(ii) was strictly required for the purposes of the Project;

(c) failure on the part of the Ministry of Works, acting on behalf of the Crown, to deal with the Turangitukua people in a manner that paid the respect due to their mana as tangata whenua and partners under the Treaty of Waitangi, and in particular failure to recognise and protect the sensibilities of kaumatua;

(d) failure on the part of the Crown to keep Ngati Turangitukua people properly informed of the Crown's actions and intentions;

(e) failure on the part of the Crown to protect Ngati Turangitukua people in the maintenance of their wahi tapu;

(f) failure on the part of the Crown to provide a co-ordinated response to the claimants' grievances concerning the recontouring of land and the rerouting of streams in the area by the Ministry of Works, both of which have led to widespread flooding and pollution problems on land still in Maori ownership;

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- (g) failure on the part of the Crown to**
 - (i) anticipate;**
 - (ii) endeavour to minimise; or**
 - (iii) provide protection from the effects of the trauma and social repercussions for Ngati Turangitukua people resulting from the rapid expansion of population and change of lifestyle occasioned by the Project and the development of the Town;**
- (h) denial by the Crown of responsibility for the many adverse consequences for Ngati Turangitukua people flowing from the Project and the development of the Town;**
- (i) failure on the part of the Crown to consult fully and effectively with those having manawhenua in the Turangi lands about any issue or at any stage since the commencement of the Project;**
- (j) failure on the part of the Crown**
 - (i) to provide proper or adequate information to land owners about the consequences of the compulsory acquisition of their land;**
 - (ii) to identify fully the land being acquired, and in respect of which land compensation was being paid in each case;**
 - (iii) to value the land taken and the interests affected at their proper value; and**
 - (iv) to compensate the owners adequately for what was being taken from them.**
- (k) failure on the part of the Crown to use land taken for the purpose for which it was taken;**
- (l) failure on the part of the Crown to offer land taken compulsorily back to the original land owners once it had served the immediate purpose for which it was taken; and**
- (m) failure on the part of the Crown to ensure that the whanau of Ngati Turangitukua retained sufficient land for their economic wellbeing, and in order to maintain their lifestyle and community.**

6. In summary, therefore

- (1) The legislation under which the Ngati Turangitukua lands were taken is inconsistent with the principles of the Treaty of Waitangi;**
- (2) The legislation should not have been employed to take the land by compulsory purchase without full exploration of other sites and other land-holding mechanisms;**
- (3) Where land was not compulsorily acquired, actions of the Crown often resulted in a reduction in the land's use and value;**
- (4) The Crown's dealings with the Ngati Turangitukua people have been characterised by breach of its Treaty duty to consult, to act in the spirit of partnership, and with the utmost good faith, causing the claimants both individually and jointly to experience distress, inconvenience, expense, and a loss of the mana that is rightly theirs as tangata whenua of these Turangi lands.**

7. Wherefore the claimants seek

- (1) an immediate recommendation that the Crown and its agencies refrain from further sale of any land within the claim area;**

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- (2) return to the claimants of the remaining Crown land without payment;**
- (3) compensation for the owners of land the value and use of which has been adversely affected by the Crown's actions, and for the owners of land who were inadequately compensated for its compulsory acquisition; and**
- (4) reimbursement of the claimants for their legal costs, valuation expenses, and disbursements.**

Dated this 22nd day of December 1993

**Carrie Wainwright
Counsel for Claimants**

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SECOND AMENDED STATEMENT OF CLAIM

1. This Second Amended Statement of Claim amends the Further Amended Statement of Claim dated 22 December 1993 in the following particulars:—

(1) A further Claim Map (Claim Map #2) is appended, showing land taken for and affected by the establishment of the Turangi township ('the Town') and the Tongariro hydro-power development project ('the Project'). The map is variously coloured to show the particular interest in the land of different whanau of Ngati Turangitukua;

(2) The claim extends to all land compulsorily acquired both for and consequential upon the establishment of the Town and the Project whether taken pursuant to the Turangi Township Act 1964 or otherwise.

2. In addition to the matters already particularised as having prejudicially affected the claimants, they were and are also prejudicially affected by the Crown's failure to comply with its fiduciary obligations to them.

3. In addition to the remedies already sought, the claimants seek

(1) 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;

(2) compensation for land taken which cannot now be returned;

(3) compensation for trauma, humiliation, loss of enjoyment of life and associated suffering; and

(4) compensation for lost opportunity to develop their land and establish an economic base.

Dated this 1st day of March 1994

**Carrie Wainwright
Counsel for Claimants**

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