

Report of the Waitangi Tribunal on the Orakei Claim

Appendix 1 The Claim

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APPENDIX I

THE CLAIM

The Orakei claim, as filed on 7 April 1986, is as follows:

WE, JOSEPH PARATA HAWKE, of Ngati Whatua in Tamaki Makaurau, and twelve other persons whose names are set out below bring the following claim to the Waitangi Tribunal.

1. By a Statement of Claim dated the 15th day of February 1984, we invoked the jurisdiction of the Waitangi Tribunal in respect of matters pertaining to Orakei Block. Following hearings in May and July 1985 the proceedings were adjourned sine die. We now abandon the claim as formulated in 1984 and we bring the claim as set out hereunder before the Waitangi Tribunal as constituted by the Treaty of Waitangi Amendment Act 1985.

2. The claim is in two parts. In the first part we, JOSEPH PARATA HAWKE, RENE LILLIAN HAWKE, SHARON AROHA HAWKE, LANCE PARATA HAWKE and KELLY PENE say that we are Maori, and that we and the tribe of Ngati Whatua of Orakei of which we are members are prejudicially affected by the policies and practices of the Crown whereby our Tribe was wrongly deprived of the 700 acre Orakei Block which ought to have been reserved for us and the Tribe as a whole in tribal ownership and control in accordance with our customs. We claim that those policies and practices that resulted in the loss of our land were contrary to the principles of the Treaty of Waitangi agreed to by our tupuna.

3. The particular policies and practices of the Crown complained of include:

- The vesting of part of our land in the Anglican Bishop of Auckland without ensuring its return to us if it ceased to be used for the purposes for which it was given and then in 1925 passing a law providing for its sale to the Crown;

- The taking of parts of our land for defence reserves and the failure to return them to us when they were no longer needed for defence purposes;

- The law that enabled our Block to be vested in some only of the tribe when it ought to have been clearly vested in or on behalf of the tribe as

a whole, or, the law that failed to make it clear that those who took title to the land were trustees only for the whole tribe;

- The law that then enabled our land to be partitioned when it should not have been partitioned, and then leased when it ought not to have been leased without tribal approval;
- The taking of our lands for sewers and roads and the use of our harbour for sewer disposal with the consequent despoliation of our seafood resources;
- The swamping of our papakainga caused by works done without our consent;
- The promotion of bills for the compulsory acquisition of our land when it was Crown granted to us as an inalienable reserve and when the Crown ought to have implemented policies to ensure that it stayed that way;
- The decision to buy our land though it was meant to be an inalienable reserve and though the Stout-Ngata Commission of Enquiry had recommended that it remain as a reserve for us;
- The failure to heed our petitions against the purchase of the land by the Crown or any other persons;
- The failure to properly consider our Petition that the land should have been held for the tribe as a whole;
- The buying up of individual interests in our land when that land was meant to be held for the whole tribe, and was land which the Crown ought not to have bought but ought to have protected for us;
- The failure to recognise our own customs by dealing with individuals and not with the assembled tribe as a whole or with tribal representatives properly appointed or recognised by the tribe;
- The application of undue pressure, trickery and unfair practices in the buying of interests in the names of individuals;
- The taking of remaining lands under the Public Works Act;
- The failure to return land taken under the Public Works Act for specific purposes and not used for those purposes;
- The combination of laws, policies and practices which rendered Ngati Whatua of Orakei totally landless (except for our church and its urupa);
- The destruction of our papakainga and marae and our eviction from the papakainga;

- Reserving lands in the Orakei Block for the former European lessees, but not reserving any land for members of Ngati Whatua;
- Requiring those of us provided with housing in Orakei to live as State tenants and not enabling us to obtain freehold titles (though permitting other State tenants in Orakei to do so);
- Failing to secure land for us as a marae, and giving land proposed for us as a marae to other persons, for a "national marae";
- Failing to heed our numerous petitions to spare our papakainga from the buying, to reserve us land for a papakainga, and to reserve land for our marae;
- Failing to prevent the desecration of our papakainga by enabling the use of the former papakainga as a Domain without adequate safeguards as to how and by whom it should be used;
- Failing to provide us with any other legal means for the full, impartial and non-political enquiry into and determination of our grievances;
- Failing to give adequate recompense for our losses in the Orakei Block (Vesting and Use) Act 1978 or to make any adequate enquiry into all the circumstances of our losses throughout Orakei Block having regard to the Treaty between our tupuna Apihai Te Kawau and the Crown in 1840.

4. As a result of the laws, policies and practices outlined in the preceding paragraph, and in spite of a partial settlement of our claims in 1978, we do not have today the tribal endowment which ought to have been our inheritance and our provision both in material and spiritual terms for our descendants. Being cognizant of the Tribunal's obligation to make recommendations on the practical application of the Treaty of Waitangi to our claim, we do not seek the return of the entire 700 acre Orakei Block to Ngati Whatua but we claim that the Tribunal should declare that we are rightly entitled to the whole of it.

5. Now therefore, the remedies we seek in the first part of our claim are as follows:

(a) An amendment to the Orakei Block (Vesting and Use) Act 1978 so that any land in Orakei Block which is presently vested in the Crown or which has been vested by the Crown in other bodies, corporations or authorities, and which remains unused for housing or roading purposes, shall be vested in the Ngati Whatua of Orakei Maori Trust Board. In particular the following pieces of land shall be vested in the Board:

(i) All those pieces of land described in the schedules to the Act which are presently land held by the Crown under the Land Act 1948, and land subject to the Reserves Act 1977 (including those reserves administered by the Auckland City Council), and land

vested in the Housing Corporation for housing purposes, and land set aside as a reserve to be administered by the Auckland City Council, and land set aside to be administered by the Youthline House Trust. The claim does not extend to the actual site of the Michael Joseph Savage cemetery and memorial;

(ii) All the land and buildings of the Orakei Marae;

(iii) The existing Orakei Maori reservation for the Church and urupa (which may conveniently be amalgamated with the additional land for church and burial ground presently vested in the Board);

(iv) The foreshore area of the Okahu Domain (including in particular the area of our former marae on our papakainga);

(v) The remainder of the Okahu Domain subject however to any existing leases and licences for sports and other facilities;

(vi) The land in Rautara Street comprised in Certificate of Title 22D/586 and vested in the Auckland City Council as a cemetery reserve.

(b) The \$200,000 payment by the Board to the Crown "by way of equalisation" should be abrogated by repeal of Section 16 of the 1978 Act and recommendations should be made to the Maori Trustee to restore the Board to the status quo ante prior to the implementation of section 16.

(c) All pieces of land currently subject to the Reserves Act 1977 shall upon being vested in the Board remain rate free so long as present or other reserve type uses are maintained and reasonable access by the general public is permitted to continue.

6. In the second part, WE, THE CLAIMANTS AS A WHOLE say that we are Maoris and that we are members or supporters of the Orakei Maori Action Committee and that we have been prejudicially affected by the policies and practices of the Crown in actions taken against the Orakei Maori Action Committee including:

- intimidation and threats by members of various Government Departments including the Commissioner of Crown Land, his officers and members of the Police acting on his advice during the period that we occupied the tents, caravans and huts surrounding our meeting house, Arohanui, on the land at Takaparawha;

- the bringing of proceedings for an injunction in the High Court;

- the refusal of legal aid to permit us legal counsel to defend ourselves against the injunction;

- the arrest of 222 persons on 25 May 1978 by the Police assisted by the Armed Services;
- the destruction of our meeting house and other property on 25 May 1978;
- the discriminatory stay of prosecutions in respect of many of the 222 arrestees so that many arrested were convicted whereas others were not;
- the arrest on two occasions in 1982 of groups of members and supporters who were convicted and fined for "trespass" on Housing Corporation land;
- the failure of the then Government Ministers to in any way recognise or negotiate with members of the Action Committee from its inception in 1976 until the installation of the present Government in 1984;
- the attempts sporadically made by the Justice Department to enforce payment of fines for "trespass" convictions.

7. Now therefore, the remedies we seek in the second part of our claim are as follows:

- (a) Recognition of the personal sacrifices made by members of the Action Committee and their supporters to highlight the grievances in relation to Orakei Block;
- (b) A free pardon for all persons convicted of offences relating to the arrests in 1978 and 1982;
- (c) A cessation of any further attempts to enforce payment of outstanding fines for "trespass" convictions;
- (d) A suitable sum of compensation to be paid to the Orakei Maori Action Committee of such amount as the Tribunal thinks fit.

8. In respect of any matters arising under either part of the Claim the Tribunal should recommend such other and additional relief as to it seems just.

9. We consider that notice of this statement of claim should be given to all bodies having interests in land vested pursuant to the Orakei Block (Vesting and Use) Act 1978, to all bodies and persons notified in respect of our 1984 Statement of Claim, to any other persons who made formal appearances at the 1985 hearings of the original claim, and to the Secretary for the Anglican Diocese of Auckland.

DATED this 3rd day of April 1986.

Joseph Parata Hawke
 Hilda Halkyard Harawira
 Rene Lillian Hawke

Grace Robertson
Sharon Aroha Hawke
Rebecca Margaret Evans
Lance Parata Hawke
Ana Meihana
Kelly Pene
Sophrenia Stockman
Gloria Abraham
Mere Taylor
Waatara Mihi

Waitangi Tribunal, Department of Justice, Wellington.