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To: The Registrar, Waitangi Tribunal
P.O. Box 5022
Wellington

IN THE MATTER OF

Te Tiriti o Waitangi 1840

AND

IN THE MATTER OF

The Treaty of Waitangi Act 1975

CONCERNING

New Ulster (right of pre-emption)

DATED 25 of November 2004

- 1. The Claimant**
 - 1.1 Christine Beach
 - 1.2 Is a direct descendant of Ruawaipu
 - 1.3 For and on behalf of the whanau – hapu of Ruawaipu (traditional tribe of Aotearoa-New Zealand).

2 The Claim: The Cause of Action

- 2.1 The Claimant states that this matter falls within one or more of the matters referred to in Section 6 (1) of the Treaty of Waitangi Act 1975 namely:
- 2.2 That she is Maori (native aboriginal) tangata whenua
- 2.3 That Ruawaipu have been and continue to be or a likely to be prejudicially affected by the various Acts, and other Laws and by various policies, practices and omissions adopted by, or on behalf of the Crown, their agents or their successors.
- 2.4 That the aforementioned prejudices are inconsistent with Articles I, II and III of Te Tiriti o Waitangi, and its principles, by way of the Crown failing to protect the tino rangatiratanga over the land belonging to Ruawaipu within their territory.

3. By way of background

- 3.1 For many years up to and including 1840, the King, Lords and Commons of England distinctly and absolutely disavowed all pretensions to the sovereignty of the New Zealand Islands, or to any dominion or authority over them. [Fenton 1870].
- 3.2 The instructions from Lord Normanby to Hobson in 1839¹ lay the foundation for Te Tiriti o Waitangi basically that the natives of New Zealand could not sign anything that may be injurious to them selves. Te Tiriti o Waitangi signed at Waiapu by Ruawaipu descendants and protected our absolute authority over our lands (territories, villages and treasures) reaffirmed by section 37 letters patent December 05 1840². Section 45 of these Letters Patent refers to revenue collecting by the legislative council³, whilst sections 46 – 51 (subject to 37) where instructions to display authentic surveyed charts and registers including lands not appropriated for sums of money to the treasurer in exchange for certification (title). These surveyed charts and registers were available in the United Kingdom for further purchasing⁴

¹ All dealings with all the Aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of her Majesty's sovereignty in the Islands. Nor is this all. They must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. [Instructions Lord Normanby to Consul Hobson 14 August 1839].

² "that nothing in the said charter contained shall affect or be construed to affect the rights of any aboriginal natives of the said colony to the actual - occupation or enjoyment in their own persons, or in the persons of their descendants, of any lands in the said colony then actually occupied or enjoyed by such natives" – [Queens Instructions s37, December 1840]

³ "and we do hereby require, that the amount of the expense, to be incurred from year to year in effecting such surveys be included in the estimate of the public expenditure of the said colony, to be annually laid before the legislature thereof, and that such expenses be a charge upon the land revenue of the current year, and be not in any year greater than one-fifth part of the estimated amount of such land revenue, and that such estimate be never exceeded in the actual expenditure for the service aforesaid during the year". [Queens Instructions s45, December 1840]

⁴ "Provided nevertheless, and it is our will and pleasure, that all such purchases so to be made as aforesaid, whether by payments in our colony of New Zealand or in this our United Kingdom, shall be

- 3.3 Purchases of land from Maori date as far back as 1815, but most were made in 1837 - 1939 when the intention of the Government of England to claim sovereignty encouraged speculators to obtain bargains. These purchases were on a grand scale, and 20 years elapsed before all claims were settled by the Land Claims Commissioners. In his report to the General Assembly dated 8 July 1862 "The Report of the Land Claims Commissioner" Francis Dillon Bell the Chief Commissioner noted at p636 that "The whole extent claimed by all classes (classes of claimants) was **10, 322, 454 acres**" and went on to say, however, that "The total quantity of land awarded or granted is **292, 475 acres**. He said that the total number of claims numbered 1,376. 14 Certified copies of the deeds are published with the report of the Land Claims Commissioner. Most of the early purchases from Maori were bounded by rivers, streams, natural features and the sea.
- 3.4 Act of 17th August, 1840, 3 & 4 Vict. C.62. The accompanying Royal Instructions of December 1840 made detailed provision for the sale of land and the issue of grants to purchasers: clauses 37 to 56. Cf. R. v. Symonds, (1847), N.Z. P.C.C. 387 at p.389. By the Australian Waste Lands Act of 1842 (U.K.), 5 & 6 Vict. C.36, s.5, the Governor was directed to convey lands in the name and on behalf of Her Majesty in such form and with such solemnities as might be prescribed by Her Majesty. In 1846, by 9 & 10 Vict. C.104, s.11, passed on the same day as the Constitution Act of 1846, it was declared that the Australian Waste Lands Act of 1842 should no longer apply to land in New Zealand. By clause 14 of the Letters Patent or Charter of 23rd December 1846, issued under the authority of the Constitution Act of 1846, 9 & 10 Vict. C.103, the authorities authorised to issue grants were the Governors of the Provinces of New Ulster and New Munster, using the public seals of their provinces. The 1846 legislation was opposed in New Zealand by the Governor and not put in place and repealed in 1848 . The Constitution Act 1852 (UK) in substitution for the Act of 1846 was preceded by the English laws Act 1854 later replaced by the English laws Act 1858 (UK) and subsequently by the English Laws Act 1908 (NZ).
- 3.5 The first sales in New Zealand were of town sections, for which speculative prices were paid. The revenue derived from land sales in 1841, indeed, though relatively small (£28,540), was more than the total received from sales for the eight years following. After 1842, sales were negligible until they began slowly to pick up in 1848. As far as land sales were concerned, therefore, in this period before self-government, the areas disposed of were small. Both in the Company lands and the Crown lands outside the Company areas, the principle was adhered to of sale at a price not below £1 per acre. No statistics exist which make possible any accurate estimate of the area so alienated. [collated from www.maf.govt.nz list of legislation applying to the alienation of Crown land]
- 3.6 As to the first of these kinds, alienation is and always has been absolutely prohibited except in favour of the Crown. By the Treaty of Waitangi the exclusive right to purchase such lands was reserved to the Crown. By the Native Land Purchase Ordinance, 1846, it was made a criminal offence for a European to purchase such land or to be found in occupation of it. By section 73 of the Constitution Act, in 1852, the same prohibition was repeated; so

made in lots, consisting of such number of acres as shall from time to time be fixed for that purpose by us or under our authority". [Queens Instructions s53, December 1840]

also in section 75 of the Native Lands Act, 1865, section 87 of the Native Land Act, 1873, and section 117 of the Native Land Court Act, 1894.

4. Statement of claim

- 4.1 The claimant states that the Crown has not purchased one inch of Ruawaipu soil under its pre-emptive right as expressed in Te Tiriti o Waitangi
- 4.2 The claimant states that no title or deed in any land accumulated by alienation or assimilation within the Ruawaipu rohe has been accomplished by the legislative process under the seal of the colony "New Ulster"
- 4.3 The claimant states that New Ulster as a process could only be accomplished by native consent. Ruawaipu did not give consent [1868/1878]
- 4.4 The native land system caused civil war between Ruawaipu whanau, and illegally tried to alienate and assimilate Ruawaipu lands by force for unjust monetary gain.

5. The Breaches

- 5.1 1840 Maori owned 66,400,000 acres of land
- 5.2 1841 Land Claims Ordinance stated that lands not actually occupied or used by the Maori belonged to the Crown. This contradicted Article 2 of the Treaty
- 5.3 1844 Governor Fitzroy dropped the pre-emption clause in Article 2 of the Treaty and allowed private sales to take place.
- 5.4 1846 Governor Grey abolished the Protectorate Department, which had the responsibility of protecting Maori rights, and gave the New Zealand Company the exclusive right of pre-emption. Forced to put the Crown's pre-emptive right back by Lord Stanley (Colonial Secretary in England).
- 5.5 1852 Maori ownership of land reduced to 34,000,000 acres. In the 12 years since 1840 almost half of the Maori owned land had been lost.
- 5.6 1852 Constitution Act: Saw the establishment of Provincial Government. Only males over 21 who had individual title to property of a certain value were entitled to vote. Very few Maori males were able to do so.
- 5.7 1860 Maori Owned Land reduced to 21,400,000 acres
- 5.8 1862 Native Lands Act: Designed to break down Maori communal ownership of land. A land court was set up to individualise title. An amendment to the act meant that Maori owners could sell to anyone. This breached the pre-emption clause in Article 2.
- 5.9 1863 New Zealand Settlement Act: Queen refuses to give it her Royal assent. Over three million acres of Maori land was confiscated to pay for the war.
- 5.10 1864 Native Reserves Act: All remaining land reserved for Maori use was put under settler control.

- 5.11 1865 Native Land Court Designed to determine ownership. Maori owners had to spend many months in town waiting to have their cases heard. If they did not show up they lost the right to the land. This caused many of them to build up huge debts and they had to sell a lot of their land to pay for them. Maori owners had to pay for any surveying work that had to be done. Many Maori owners sold land rather than go through the humiliating experience of the Land Court sitting. 1866 Between 1865 and 1875 10 million acres of land was lost by Maori
- 5.12 1866 East Coast Land Titles Investigation Act not referred to her Majesty the Queen for Royal ascent
- 5.13 1867 East Coast Land Titles Investigations Amendment Act not referred to her Majesty the Queen for Royal ascent.
- 5.14 1868 Petitions from East Coast Natives descendants from Ruawaipu petition to Governor Grey asking to remove the troublesome government who are threatening to confiscate their lands with forced assimilation. Ruawaipu descendants make it clear that they are not going to cede one inch of soil.
- 5.15 1877 The Treaty is declared a nullity by Judge Prendergast in the Bishop of Wellington v Wi Parata case. Legislation was introduced to allow direct purchase of Maori land. This was another breach of Article 2,
- 5.16 1878 Waiapu North defy government law
- 5.17 1879 An amendment by Grey of the Native Land Act made it easier for small farmers to get Maori land. The Government sabotaged the Commission that was set up to investigate land confiscation in Taranaki.
- 5.18 1881 Native Reserves Act: The control of Maori reserves is taken over by the Public Trustee.
- 5.19 1886 Native Lands Administration Act: Rejected the traditional right of communal ownership. Maori land was given over to small groups of trustees who had the right under this act to sell it.
- 5.20 1891 Maori Land stood at 11,079,486 Acres
- 5.21 1893 Native Land Purchase and Acquisition Act: Designed to speed up the purchase of Maori Land.
- 5.22 1894 Advances to Settlers Act: Low interest loans made available to white settlers to buy land from the Government. Native Land Court Act: Names on the Certificate of Title were deemed trustees or beneficial owners. Validation of Invalid Land Sales Act: Any Pakeha misdealings concerning Maori land were legitimised.
- 5.23 1894 Maori Land Settlement Act: Maori land was put under the control of Land Councils. There was no Maori representation. The settler population had increased and so had their desire for land.
- 5.24 1903 An act re-affirms Judge Prendergast's 1877 ruling that the Treaty is a nullity.

- 5.25 1905 The abolition of Native Councils (they had slowed down the Government's land purchases).
- 5.26 1905-8 There were amendments to the Native Land Act which forced further sales of Maori land.
- 5.27 1911 Maori land now amounted to 7,137,205 acres
- 5.28 1920 Maori land reduced to 4,787,686 acres
- 5.29 1939 Maori land reduced to 4,028,903 acres.
- 5.30 1953 Maori Affairs Act: If Maori land was not occupied or being used then it was declared "waste land" and taken by the Government.
- 5.31 1953 Town and Country Planning Act: Prevented Maori from building on their land. This forced many Maori to move from rural areas to the cities.
- 5.32 1960 The Hunn Report: Jack Hunn, a top-ranking civil servant, recommended a stepping up of the assimilation process.
- 5.33 1967 Maori Affairs Amendment Act: Maori trustee had the right to ask individuals to sell their interest to the Government. Land owned by fewer than four Maori people had to be put under one title.
- 5.34 1975 Maori land reduced to 3,000,000 acres
- 5.35 2003 Ruawaipu publicly declares its autonomy over its territories and assets.

6. The result of prejudice

- 6.1 It is alleged that as result of specific prejudices, Ruawaipu have been adversely affected and discriminated in the development of their political, economic, social and cultural well being by way of;
 - (a) The loss or denial or alienation of Ruawaipu interests in their property rights protected under Article II of Te Tiriti o Waitangi .
 - (b) Legislation, Acts laws policies and regulations restricting Ruawaipu to the legitimate use, control, management, development and ownership of their lands and resources.

7. Recommendations Sought

- 7.1 That the tribunal find in favour of this claim and the need for redress;
- 7.2 That the lands and territory of Ruawaipu is restored back to the rightful self government of our people, to redeem and rectify the will of our ancestors.

8. Particulars

- 8.1 The Claimant wishes the Tribunal to commission a researcher to report on the Claim.
- 8.2 The Claimant asks for permission to amend this claim if necessary.
- 8.3 That this claim is heard at Taumata o Tapuhi Marae, Rangitukia, East Coast Gisborne.
- 8.4 The Claimant believes all affected parties of the Tribunal East Coast Inquiry District should be notified of the claim.
- 8.5 The Claimant wishes to notify the tribunal that her legal representative is:

Charl Hirschfeld
PO Box 7728
Wellesley Street
Auckland

Signed: *Beach*