

To: The Register
Waitangi Tribunal
P.O. Box 5022
Wellington

IN THE MATTER

of The Treaty of Waitangi Act 1975

and

IN THE MATTER

of a Claim to the Waitangi Tribunal by Bill
Te Kani, Tahanga Kembra, Hira
Kururangi, Matekino Smith, Cheryl Te
Kani – McQueen, Erica Kururangi-Zingel,
Margaret Kururangi for and on behalf of
themselves and as members of the hapu Te
Whanau a Tapaeururangi o Ruawaipu

AMENDED STATEMENT OF CLAIM

Dated 30 January 2007

1. The Claimant

- 1.1 This statement of claim is lodged by: Bill Te Kani, Tahanga Kemera, Hira Kururangi, Matekino Smith, Cheryl Te Kani – McQueen, Erica Kururangi-Zingel, and Margaret Kururangi (“the claimants”).
- 1.2 The claimants have many common whakapapa connections including eponymous ancestors Uepohatu, Porourangi, Hauiti and Apanui, but the claimants maintain the manawhenua from their eponymous ancestor Ruawaipu (“traditional tribe”).

The Claimant Area

- 1.3 The claimants are all members of Te Whanau a Tapaeururangi from the region within the territory known as the rohe of Potaka. The coastal boundary is generally known as Tokanui Point ki Whangaarumia (Midway) seawards past the 200 mile zone. While the inland boundary heads to the Waikura ranges.
- 1.4 The claimants state they are the kaitiaki and hold manawhenua and rangatiratanga over many taonga and wahi tapu including; te maunga o Taumata a Ruru, te maunga Maungaiha, te Maunga o Pekorangihekeiho, te Maunga o Kokomaka, te awa o Maungapurua, te awa o Te Tapu, te awa o Waitangirua, te awa o Onematariki, te awa o Wharekahika (within our boundaries), te awa o Mangakopikopiko, te awa o Maunga o Meka, te awa o Oweka , nga tauranga ika ki Whaitiri (Lottin Point), Okorei and Omarapaero.
- 1.5 The claimants say they retain their taonga within their rohe, which includes but is not limited to Oils, Petroleum’s, Minerals, Flora and Fauna, Development space and Atmospheric rights.

2. Claim Overview.

- 2.1 This claimants state Article II of Te Tiriti o Waitangi secured and protected their hapu rights pre 1840 and common law (“Te tino rangatiratanga”), and that the Crown has breached the principles of Te Tiriti o Waitangi and natural justice by continual alienation and confiscations by way of Crown Acts, policies and omissions. These deliberate practices violate the claimants, Te Tiriti o Waitangi rights, human rights, constitutional rights, civil and political rights, indigenous rights, and rights under International law.
- 2.2 The claimants say the Crown has had ample opportunity to protect and actively maintained the claimants te tino rangatiratanga via gazette, Letters Patent, proclamations and legislation, yet the Crown failed to do so.
- 2.3 The claimants say the Crown has continued to receive great economic benefit and used this economic wealth to further promote prejudices.
- 2.4 The claimants say that the effects of actions adopted or omitted by or on behalf of the Crown have caused hapu members to live in unnecessary poverty and deprivation. As a direct result, hapu members are physically and emotionally forced to leave their ancestral lands, disassociating themselves from their whanau hapu to seek a better standard of living and human development.
- 2.5 The claimants say 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:
- (i) That the claimants are Maori (tangata whenua)
 - (ii) That claimants have been and continue to be prejudicially affected by various Acts, laws, policies, practices and omissions

adopted by or on behalf of the Crown, the Crown's agents or their successors since 1841.

2.6 That the aforementioned prejudices are inconsistent with the principles of Te Tiriti o Waitangi 1840, by virtue of the Crown;

(i) Failing its feudal duty to protect the tino rangatiratanga of Tapaeururangi territorial lands, forests, fisheries and other taonga.

(ii) Failing its fiduciary duty to act honourably, reasonably and with justice to protect the tino rangatiratanga of Tapaeururangi territorial lands, forests, fisheries and other taonga.

3. The Breaches

3.1 The claimants say in particular to that of the Crown, through legislation, policies and practices since 1840, have denied or impinged on the claimants te tino rangatiratanga over their hapu domain. Breaching Articles I, II and III of Te Tiriti o Waitangi

The Breaches Article I

3.2 The Crown (UK) granting the establishment of provincial government in 1852 [UK Constitution Act] and relinquishing the Crowns direct duties and responsibilities of protection.

3.3 The Crown (UK) granting dominion status to NZ government in 1907 whilst failing to protect the te tino rangatiratanga of the hapu.

3.4 The Crown (UK) enacting the Statutes of Westminster 1931 granting constitutional powers to the NZ colonial government.

3.5 The Crown (UK) allowing the NZ government to take the 1852 and 1931 UK constitutions and usurp sovereignty over Te Whanau a Tapaeururangi [NZ Constitution Act 1986].

The Breaches of Article II

3.6 The 1865- 1931 Native Land Court Acts: forced the foreign doctrines of the British land tenure system on the claimants and played a major role in the destruction of the claimants tikanga, wahi tapu, he taonga tuku iho, kaitiakitanga, manawhenua, rangatiratanga and taha wairua.

3.7 The 1867 the Municipal Corporations Act gave territorial councils with the power to regulate buildings and influenced district planning through location of public roads and buildings. This Act was a forerunner to the Town and Country Planning Acts 1953/1977. The claimants say these Acts were detrimental to the development of their hapu domain.

3.8 The 1874 –1949 New Zealand Forest Acts: Allowed for the creation of state forests, and gave Parliament authority to regulate access.

3.9 The 1877 Land and Income Tax Act: was invented by Governor Grey and the forerunner to the 1908 Land and Income Tax Act, passed by settlers. Tax legislation soon usurped the claimants sovereign rights to revenue and royalties.

3.10 The Scenery Preservation Amendment Act (conservation legislation): Section 10 deemed the taking of any Native land under the Public Works Act of 1894, 1905, or 1908 for the purpose of scenery preservation to be valid.

3.11 The 1937 Oils and Petroleum's Act was an act of confiscation by legislation with considerable economic benefit to the Crown.

3.12 The 1977 Territorial Sea and Exclusive Economic Zone Act: the Crown creates inter alia, and presumes ownership of the foreshore and seabed.

- 3.13 The 1985 Fish Royalties Act and the 1986 Fisheries Act: The Crown creates a property right with the introduction of a fisheries quota system. The 1986 Act omitted the Treaty clause from the Fisheries Act 1983 [s88 (2)]
- 3.14 The 1991 Crowns Minerals Act: Government omits minerals from the resource management Act and claims Crown ownership. Section 10 and 11 confiscate and expropriate the claimants property rights.
- 3.15 The 1991 Resource Management Act: Denies the claimants occupational rights. Section 8 and 33 were never implemented.

Breaches of Article III

- 3.16 The Human Rights Act (UK) 1998 failed to recognise the claimants rights under Article III of Te Tiriti o Waitangi.

4. Other matters (The Potaka Marae Hatchery)

- 4.1 The claimants say that as of a direct result of Crown practices, the expropriation of their foreshore and seabed and the deterioration of their wahi tapu an aquaculture hatchery was erected at Potaka Marae under the native title (tikanga) to maintain their tino rangatiratanga over the manawhenua. This involved a project to re seed, educate and become economically self sufficient.
- 4.2 The claimants say as a result the Maori Land Court had trespassed their hapu members from their ancestral land and re moved their kaumatua from their trusteeship under the Maori Reservations Regulations 1995 prejudicially.
- 4.3 Furthermore hapu members were arrested by the police and one was imprisoned. Local government had threatened legal action whilst the

Ministry of Fisheries requested batons and stab proof vests to enter on the Marae to enforce legal action.

- 4.4 Hapu members as a result of this intimidation had become divided fuelled by the government coercion that the project was illegal and breaking the law.
- 4.5 The claimants say that they have exclusive rights pursuant to Article II of Te Tiriti o Waitangi (pre common law), and that the Crown NZ assumed absolute authority over customary land falsely.
- 4.6 The claimants say that under section 27 of Te Ture Whenua Act the Governor General failed to report and inquire into the claimants grievances.
- 4.7 The claimant say that under section 29 of Te Ture Whenua Act 1993 the Minister of Maori Affairs failed to report and inquire into the claimants grievances.
- 4.8 The claimants say that under section 5 of the Human Rights Act 1993 the Human Rights Commission failed to report and inquire into the claimants grievances.
- 4.9 The claimants say that this was an omission by way of the Crown failing through its agencies to protect and honour in the utmost of good faith the claimants rights. In particular that the Crown failed to;
 - a. Recognise customary law; and
 - b. Protect customary law; and
 - c. Enforce customary law.

5. The Result of Prejudice

5.1 The claimants say that as a result of the specific prejudices by the Crown Te Whanau a Tapaeururangi have been adversely affected and discriminated against in the development of their political, economic, social and cultural well being by way of;

- (i) The loss, denial and attempted alienation of Te Whanau a Tapaeururangi tino rangatiratanga, kaitiakitanga and manawhenua in their claimant area.
- (ii) Crown profiteering by the legislative expropriation and attempted colonisation of the claimants lands, forests, fisheries, minerals, oils, petroleum's, metals, waters, revenues and other taonga.

5.2 It is also alleged that the Crown since the Treaty of Waitangi Act 1975 has continued to blatantly override the claimants rights by giving itself ultimate power to breach, which includes but is not limited to;

- (i) Section 20 of the Ombudsman Act 1975.
- (ii) Section 92(2) of the Human Rights Act 1977.
- (iii) Section 23 Resource Management Act 1991.
- (iv) Section 4 of the NZ Bill of Rights Act 1990
- (v) Section 9 Crowns Minerals Act 1991.
- (vi) Section 8/9 of the TOWFCS Act 1992
- (vii) Section 151 Human Rights Act 1993.
- (viii) Section 6 of the Maori Aquaculture Settlement Act 2004.

5.3 The claimants say as a result of the prejudice they have also been effected spiritually by:

- (i) The loss of Te Whanau a Tapaeururangi "tikanga" and cultural sustenance by Crown intervention.
- (ii) The prohibition of Te Whanau a Tapaeururangi customary law by Crown intervention.

- (iii) The irreversible and unrecoverable matauranga, kawa and he taonga tuku iho of their tipuna by Crown intervention.

6. Recommendations Sought

6.1 The claimants seek recommendations from the Waitangi tribunal that the Crown return to Te Whanau a Tapaeururangi within its claimant area all of the following:

- (i) Land under Perpetual lease (expired)
- (ii) Land taken under the Public Works Act 1984
- (iii) Land taken under the WWI rehabilitation scheme 1918
- (iv) Land taken under the Native Trustee Act 1920
- (v) Land taken under the Forests Act 1949
- (vi) Land taken under the Maori Affairs Act 1953
- (vii) Land taken under the Waiapu North Consolidation Scheme 1957
- (viii) Land taken under the Reserves Act 1977
- (ix) Land taken under the National Parks Act 1980
- (x) Land held by the State Owned Enterprises Act 1986 (including any land vested by the Crown under part 4 (27) of the SOE 1986)
- (xi) Land taken under the Conservation Act 1987 (including all lands and resources currently administered by DOC).
- (xii) Land held under the Education Act 1989 (native education blocks)
- (xiii) Land held under the Crown Forests Asset Act 1989
- (xiv) Purported Crown owned natural freshwater resources and freshwater bodies (including river beds banks, riparian and esplanade strips) taken under the Counties Amendment Act 1961, the Water and Soil Conservation Act 1967 and Resource Management Act 1991.

- (xv) The land and water bodies taken under the Harbours Boards Act 1878 & 1950, The Counties Amendment Act 1961, Territorial Sea and Fishing Zone Act 1965, the Territorial Sea Contiguous Zone and Exclusive Economic Zone Act 1977, the Foreshore and Seabed Endowment Revesting Act 1991 and the Foreshore and Seabed Act 2004.
- (xvi) The fisheries taken under the Oyster Act 1866/1966, Marine Farming Act 1971, the Fisheries Act 1986, the Maori Fisheries Act 1989/1992, the Fisheries Act 1993/1996 and the Maori Commercial Aquaculture Settlement Act 2004.
- (xvii) All natural resources, minerals, oils and petroleum's taken under the Petroleum and Oils Act 1937, Resource Management Act 1991 and Crowns Minerals Act 1991.

6.2 The claimants also seek recommendations from the Waitangi Tribunal that;

- (i) Redress be given to the claimants for the loss of their economic base including loss of interest, revenue and royalties collected by the Crown.
- (ii) That the claimants are given the ability to collect their own revenue to become self sufficient and independent of Crown dependency.
- (iii) That the claimants are able to constitute and pass their own legislation (recognised and enforceable by Crown statute to ensure the protection and sustenance of the claimants land, forests, fisheries and other taonga.
- (iv) That urgent remedial endowment programmes are implemented by the Crown to assist the claimants restoration

of their mahinga kai and other traditional food resources of significant cultural importance to the claimants.

- (v) That the matauranga of the claimants connected to their rongoa and other taonga be fully recognised and protected as intellectual property rights belonging to Te Whanau a Tapaeururangi.
- (vi) That legal aid monies and equal resources be appropriated directly by parliament to fully prepare and present this claim against the defendant who has already been allocated full resources and monies by parliament (“The Crown Law Office”).
- (vii) That the Waitangi Tribunal under section 6A of the Treaty of Waitangi Act 1975 recommends the Maori Appellate Court to determine the customary rights involved with the Potaka hatchery.
- (viii) That monetary compensation is given to any private land owners for their lands claimed by the claimants.
- (ix) Make such other remedies as the Waitangi tribunal seems appropriate to provide redress.

7 Particulars

- 7.1 The claimants wish the Tribunal to commission a researcher to report on their Claim.
- 7.2 The claimants ask for permission to amend this claim if necessary.
- 7.3 That this claim be heard at Potaka Marae, East Coast Gisborne.

7.4 The claimants believe all interested parties of the Tribunal East Coast Inquiry District should be notified of the claim.

7.5 The claimants wish to notify the Tribunal that their Legal Counsel is:

Darrell Naden
Tamaki Legal
P. O. Box 259-280
Greenmount 2141
Telephone: 09 265 2107
Facsimile: 09 265 2118
Mobile: 021 37 10 37
Email: Darrell@tamakilegal.com