

IN THE WAITANGI TRIBUNAL OF  
NEW ZEALAND

WAI 704

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF The Hauraki Regional Inquiry AND

IN THE MATTER OF Claims to the Waitangi Tribunal by  
KATHLEEN CHALMERS on  
behalf of herself and the descendants  
of HAKIPENE HURA and  
POIHAERE HAKIPENE HURA

**OPENING SUBMISSIONS BY COUNSEL FOR WAI 704**

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## **SYNOPSIS OF SUBMISSIONS**

These submissions are intended to give the Tribunal an overview of this claim and its component parts. The submissions will take the following order:

- 1.0 INTRODUCTION
- 2.0 CHRONOLOGY OF HISTORICAL EVENTS
- 3.0 RELEVANT TREATY PRINCIPLES
- 4.0 FIRST CAUSE OF ACTION - THE NATIVE LAND COURT AND NATIVE LAND COURT LEGISLATION
- 5.0 SECOND CAUSE OF ACTION - ALIENATIONS BY THE CROWN
- 6.0 THIRD CAUSE OF ACTION - THE MAORI REAL ESTATE MANAGEMENT ACT 1888
- 7.0 PREJUDICE SUFFERED
- 8.0 THE EVIDENCE
- 9.0 CONCLUSION

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### 1.0 **INTRODUCTION**

- 1.1 This opening submission is intended to briefly outline the nature of the claim Wai 704 brought by **KATHLEEN CHALMERS** ("Mrs Chalmers") for and on behalf of descendants of **HAKIPENE HURA** ("Hakipene") and **POIHAERE HAKIPENE HURA** ("Poihaere").
- 1.2 The second amended statement of claim, the evidence and these opening submissions are directed at identifying breaches of Treaty principles and the prejudice suffered as a result of those breaches by the descendants of Hakipene and Poihaere.
- 1.3 This claim is a whanau claim. Mrs Chalmers and members of her whanau are the direct descendants of Hakipene and Poihaere.

- 1.4 Hakipene was one of fourteen persons registered under Section 17 of the Native Land Act 1867 as having interests in the Hikutaia 1 and 2 blocks and the Whangamata 3 and 4 blocks.
- 1.5 Hakipene was the father of Poihaere. She inherited shares in Hikutaia 1 and Whangamata 4 from her father. She also inherited shares from her mother Paea Kawhena in Whangamata 4.
- 1.6 Mrs Chalmers and her whanau represent all of the descendants of Hakipene and Poihaere. Mrs Chalmers and her whanau claim interests in Hikutaia 1A2, Hikutaia 1G3, Whangamata 4D3, Whangamata 4D4B1 and Whangamata 4D4B2A.
- 1.7 Hakipene and Poihaere together had interests in 33 blocks. These blocks are set out in Tables 1 - 4 on pages 15 - 17 of Dr Tracy Tulloch's ("Tulloch") report, "The Alienations of Poihaere Hura's Interests in Seven Hauraki Land Blocks" (1999), #11 and letter from Tulloch to Waitangi Tribunal undated in relation to the Waiari 2 South B2 Block near Thames.
- 1.8 A case study was undertaken by Tulloch in relation to several blocks, they being Matakirikiri 1, Tahanui 9A (2A9), Te Kapua 1, Hikutaia 1A2, Ohoupo IA, Ohoupo 2A, Hikutaia 1G3, Whangamata 4D3, Whangamata 4D4B1 and Whangamata 4D4B2A. The claimants have decided to concentrate their claim at this stage to the Hikutaia and Whangamata blocks in this hearing. The reason for this decision is based purely on their first-hand knowledge of the Hikutaia and Whangamata blocks.
- 1.9 The claimants have instructed that following this hearing they will be filing a third amended statement of claim in relation to the other 23 blocks which are not specifically mentioned in the second amended statement of claim.

1.10 The evidence will show that:

- (a) The Crown purchased land interests owned by Poihaere without properly investigating whether or not she had sufficient other lands.
- (b) The Crown purchased Poihaere's land interests knowing full well that she had no other lands, rendering her landless.
- (c) That survey costs and rates were the reasons why Hikutaia 1G3 was transferred into private ownership.
- (d) The social and economic impact of land alienation on Poihaere and her family meant that they lived in poverty and were forced to live at a distance from their ancestral land base.

1.11 This resulted in a loss of:

- (a) Mana whenua and turangawaewae.
- (b) Te reo and tikanga.
- (c) Contact with their hapu and iwi.
- (d) An economic base.

1.12 During the course of these submissions, counsel will refer to technical reports and tangata whenua evidence. The technical reports which counsel will refer to are:

- (a) David Alexander - "The Hauraki Tribal Lands" Volume 8, Part 2, Wai 100 #A8.
- (b) Robin Anderson - "The Crown, the Treaty and the Hauraki Tribes 1800-1885", Wai 100, #A6.

- (c) Tracy Tulloch - "The Alienation of Poihaere Hura's Interests in Seven Hauraki Land Blocks", Wai 704, #11.
- (d) Tracy Tulloch - "The Alienation of Poihaere Hura's Interests in Seven Hauraki Land Blocks", Wai 704. Document Bank #11 A.
- (e) Tracy Tulloch - Statement of Evidence, Wai 704, #A3.
- (f) Dianne Chalmers - "The Social and Economic Impact Report for Wai 704 - A Whanau Perspective" #A2.

1.13 A Social and Economic Impact Report has been compiled and will be presented by Dianne Chalmers together with her cousins Suzanne Savage and Noel Wheeler. At the end of the evidence, a ten minute video presentation will be given.

## **2.0 CHRONOLOGY OF HISTORICAL EVENTS**

2.1 In late 1872 and early 1873 the Hikutaia and Whangamata blocks were investigated by the Native Land Court.

*Refer Alexander, #A8, pp 100 - 101, 160 - 161 and Tulloch #11, p44.*

2.2 In December 1872 the Hikutaia 1 block comprising 2,066 acres, 3 roods and 8 perches and Hikutaia 2 block comprising 2,376 acres were vested in ten owners. The interests of a further fourteen persons were registered including inter alia Hakipene.

*Refer Alexander, #A8, pp 159, 161 and Tulloch #11, p44.*

2.3 In December 1872 the Whangamata 3 block and Whangamata 4 block were investigated by the Native Land Court.

*Refer Alexander, #A8, pp 101 and 161 and Tulloch #11, p44.*

2.4 In December 1872 the Whangamata 3 block comprising 8,210 acres and the Whangamata 4 block were vested in ten persons. The interests of a further fourteen persons were registered including inter alia Haki-pene.

*Refer Alexander, #A8, pp 99 and 101 and Tulloch #11, p44.*

2.5 In December 1872 the Crown purchased the Hikutaia 2 block for £555.

*Refer Alexander, #A8, p62 and Tulloch #11, p44.*

2.6 In January 1873 the Crown purchased the Whangamata 3 block for £2,065.

*Refer Alexander, #A8, p 102 and Tulloch #11, p44.*

2.7 In December 1873 the Hikutaia 2 and Whangamata 3 blocks were declared wastelands of the Crown.

2.8 On 17 January 1898 Hikutaia 1A2 comprising 18 acres, 1 rood and 22 perches was awarded to 21 persons including Poihaere. Poihaere's one share equating to approximately 1 acre was sold by her trustee Tamati Paetai on 3 March 1898 to a private purchaser Charles Alley for £76. Poihaere was paid £4 for her interests. Tamati Paetai and others wished to sell the Hikutaia 1A2 block in order to repay a loan to Charles Alley, a storekeeper for tangi expenses including that of Haki-pene.

*Refer Tulloch #11, pp 49, 50.*

2.9 In 1907 Hikutaia 1G3 comprising 81 acres, 1 rood and 14 perches was awarded to Poihaere solely. On 21 May 1915 the Chief Surveyor applied to the Native Land Court under the Native Land Act 1909 for a charging order to recoup survey costs from the 1907 partition of Hikutaia 1G3. Poihaere's share of the survey costs was £13.13s.

*Refer Tulloch #11, p 52.*

- 2.10 In 1916 Poihaere leased Hikutaia 1G3 to Mrs Rubina Alley for 21 years at £25 per annum. The Native Land Court confirmed the lease on 31 October 1916. On 20 September 1917 Hikutaia 1G3 was purchased by Albert Henry Alley for £500.

*Refer Tulloch #11, pp 52, 53.*

- 2.11 In October 1897 Whangamata 4 was partitioned to create inter alia Whangamata 4D comprising 4,880 acres. This was awarded to 67 individuals including Poihaere's parents Hakiene and Paea. Hakiene was awarded 138.1 shares. On 23 May 1916 Whangamata 4D was partitioned to create 4D4 comprising 3,639 acres and was awarded to 63 owners including Hakiene.

*Refer Tulloch #11, pp 60, 63 and 65.*

- 2.12 On 23 May 1916 Whangamata 4D3 comprising 1,140 acres was vested in seven owners including Poihaere. Poihaere was awarded 162.5 shares equating to 162.5 acres in Whangamata 4D3.

*Refer Tulloch M1, pp 63 and 64.*

- 2.13 On 16 May 1917 the Crown purchased 152.5 shares out of a total of 162.5 shares in the 4D3 block. The Crown paid £95.6s.3d. This left Poihaere with ten shares equating to ten acres. On 26 September 1919 the Crown purchased Poihaere's remaining ten shares or ten acres for £7.10s.

*Refer Tulloch #11, pp 66 and 69, Tulloch #11A doc F6, p 106.*

2.14 On 5 March 1920 Poihaere succeeded to Hakipene's interests in Whangamata 4D4B and was awarded 138.1 shares. On 20 July 1920 the Crown purchased the last of Poihaere's shares in 4D4B2 for £86.6s.3d. On 25 October 1921 Poihaere's interests were partitioned out as Whangamata 4D4B2A and proclaimed Crown land on 14 January 1922.

*Refer Tulloch #11, pp69 - 70.*

### 3.0 **RELEVANT TREATY PRINCIPLES**

- 3.1 The relevant Treaty principle is the overarching principle of cession by Maori of sovereignty to the Crown in exchange for the protection of rangatiratanga.
- 3.2 Inherent in that principle is the duty on the Crown to actively protect Maori Treaty rights.
- 3.3 This principle is of course a direct reflection of the guarantees contained in Article 2 of the Treaty.
- 3.4 Submit that the genesis of the duty of active protection can be found in Lord Normanby's instruction of 14 August 1839 to Captain Hobson wherein he set out inter alia the following:

"All dealings with 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. You will not, for example, purchase from them any Territory the retention of which by them would be essential, *or highly conducive, to their own comfort, safety or subsistence.* The acquisition of Land by the Crown for the further Settlement of British Subjects must be confined to such Districts as the Natives can alienate without distress or



serious inconvenience to themselves to secure the observance of this rule will be one of the first duties of their official protector'..."

(Emphasis added) *Refer*

*Orakei report 1987, pl40.*

- 3.5 The duty of active protection has been endorsed by the Privy Council in New Zealand Maori Council v Attorney-General [1994] 1 NZLR 513 at 517 and in the Court of Appeal in New Zealand Maori Council and Latimer v Attorney-General & Ors [1987] 1 NZLR 641 at 664 where the then President of the Court of Appeal said:

"Counsel were also right, in my opinion, in saying that the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable. There are passages in the Waitangi Tribunal's Te Atiawa, Manukau and Te Reo Maori reports which support that proposition and are undoubtedly well-founded. I take it as implicit in the proposition that, as usual, practicable means reasonably practicable.

- 3.6 The Tribunal has previously considered the obligation, duty and responsibility on the Crown to ensure that Maori were left with sufficient land and resources to support themselves. In the Orakei report, the Tribunal said:

" ... we find that Article 2, read as a whole, imposed on the Crown certain duties and responsibilities, the first to ensure that the Maori people in fact wished to sell; the second to ensure that they were left with sufficient land for their maintenance and support or livelihood or, as Chief Judge Durie puts it in the Waiheke report ... that such tribe maintained a sufficient endowment for its foreseen needs."

*Refer Orakei Report, p 147.*

3.7 The Tribunal in the Ngai Tahu Report 1991 when considering this issue said:

"Although by the 1840's Ngai Tahu were relatively thinly dispersed over a vast area of land, Crown officials in New Zealand (in contrast to their colonial office masters) for the most part accepted the territory belonged to Ngai Tahu. They were also aware that various hapu maintained a system of shifting cultivation and engaged in seasonal foraging and hunting pursuits in different parts of the interior where they settled intermittently and for a relatively brief period. It was incumbent on the Crown officials seeking to purchase Ngai Tahu land to take all reasonable steps to ascertain the nature, location and extent of hapu hunting and food gathering areas over the tribal territory, as well as the more permanent kainga. This would ensure, after consultation with their representatives, that appropriate provision was made for their present and likely future needs, including the various forms of farming."

*Refer Ngai Tahu Report 1991, Volume 2, pp 239 - 240.*

3.8 Submit that the evidence clearly demonstrates that the Crown ignored Lord Normanby's instructions, the guarantees contained in Article 2 of the Treaty and the Treaty principle of active protection in acquiring the majority of Hikutaia and Whangamata blocks.

4.0 **FIRST CAUSE OF ACTION - THE NATIVE LAND COURT AND NATIVE LAND COURT LEGISLATION**

4.1 The Native Land Court had a devastating effect on Maori traditional land tenure. The Whangamata and Hikutaia blocks were no exception. The Native Land Court made it easier for the blocks to be alienated to the Crown and/or to third parties.

4.2 Both the governing legislation which controlled Native Land Court activities and the activities of the court itself have been subject to criticism by this Tribunal in the past, refer for example to the Pouakani Report 1993, Wai 33, p307 and the Taranaki Report; Kaupapa Tuatahi, 1996, Wai 143, pp 3, 182 - 198, 277-290.

4.3 The operations of the Native Land Court system left Maori with insufficient lands for their sustenance and future development by the end of the 19<sup>th</sup> century. The Crown in the Office of Treaty Settlements publication "Healing the Past, Building a Future, A Guide to Treaty of Waitangi Claims in Direct Negotiations with the Crown", at p12 after discussing criticisms of the effect of the Native Land Legislation states:

"These and other criticisms may prove valid when considering the operations of the Native Land Court system, in particular districts. The long term results of the system are clear. By the end of the 19<sup>th</sup> century, many hapu were left with insufficient lands for their sustenance and future development. Between 1865 and 1899, eleven million acres of Maori land had been purchased by the Crown and European settlers in the North Island".

4.4 Restrictions on the sale of "inalienable blocks" could be lifted at the discretion of the Native Land Court under 19<sup>th</sup> century legislation as in the case of the Hikutaia 1A2 block. Under the Maori Land Settlement Act 1905 Maori Land Boards were responsible for ensuring that Maori did not render themselves landless providing some protection from private and Crown purchase agents.

4.5 The introduction of the Native Land Act 1909 resulted in a more widespread lifting of the restrictions. Section 207 of the Native Land Act invalidated all existing restrictions on the alienation of Maori freehold land where imposed by "any Crown grant, Certificate of Title, Order of the Maori Land Court, or other Instalment of Title, or by any Act". Section 207 provides that:

"A native may alienate or dispose of any land or any interests therein in the same manner as a European, and Maori land or any interests therein may be alienated or disposed of in the same manner as if it was European land."

*Refer Tulloch #11, p85.*

- 4.6 The alienation restrictions were removed from Hikutaia 1A2 so that the applicants could sell the land in order to repay money loaned to them by the local storekeeper Charles Alley.

*Refer Tulloch #11, p49.*

- 4.7 Hikutaia 1G3 comprising 81 acres, 1 rood and 14 perches was the last of Poihaere's land interests in the Hikutaia block. Hikutaia 1G3 was not made inalienable and therefore could be leased.

- 4.8 As a direct result of survey costs and rate arrears, Poihaere was forced to lease the Hikutaia 1G3 block to Rubina Alley for 21 years in order to repay her debts.

- 4.9 The lease assisted in the transfer of Hikutaia 1G3 to Albert Henry Alley on 20 September 1917 for £500.

*Refer Tulloch #11, pp 52 - 53.*

- 4.10 Two acres from the Hikutaia 1G3 block were deducted from 1G3 for existing and proposed new roads. This is discussed at paragraph 5.46 of these submissions.

5.0 **SECOND CAUSE OF ACTION - ALIENATIONS BY THE CROWN**

Hikutaia 2 and Whangamata 3

5.1 In November and December 1872, Hikutaia 2 and Whangamata 3 were investigated by the Native Land Court.

5.2 Hikutaia 2 and Whangamata 3 were not subject to any restrictions on alienation.

*Refer Alexander #A8, ppl00 - 102, 160 - 161.*

5.3 Hikutaia 2 and Whangamata 3 were promptly purchased by Crown purchasing agent James Mackay ("Mackay") for the Crown in January 1873 for £555 and £2,065 respectively.

*Refer Alexander #A8pp 101 and 102.*

5.4 Submit there is no doubt that Crown policies assisted in the alienations of Maori land to the Crown.

5.5 The background to the eventual alienation of Hikutaia 2, Whangamata 3, Whangamata 3D3, Whangamata 4D4B1 and Whangamata 4D4B2A must be viewed against the desire on the part of the Crown to acquire large tracts of land in the Hauraki district in the 1870's.

5.6 In the early 1870's the Crown declared an intention to purchase the bulk of the Coromandel Peninsula including the Hikutaia and Whangamata blocks.

*Refer Anderson, #A6, pp 201 - 202.*

5.7 Against this backdrop, the Crown pursued an aggressive and unrelenting purchasing policy in relation to the Hikutaia and Whangamata blocks.

## Whangamata 4D

5.8 Submit that despite the Crowns knowing that the owners of the Whangamata block including Poihaere had no sufficient "other lands" the Crown pursued this policy, a particular example being the Whangamata 4D blocks.

5.9 In October 1897 the Native Land Court awarded the Whangamata 4D block comprising 4,880 acres to 67 individuals including Poihaere's parents Hakipene and Paea.

*Refer Tulloch #11, p60.*

5.10 During the period between 1910 - 1920 the Crown expressed an interest in acquiring a significant portion of the Whangamata 4D block.

*Refer Tulloch #11, p61.*

5.11 W Bowler, a land purchasing officer in the Auckland Native Land Purchasing Office negotiated the purchase of Whangamata 4D, which was valued in March 1913 at £3,015.

*Refer Tulloch #11, pp 61 - 62.*

5.12 Bowler warned the Native Department that some owners would not have sufficient other lands in relation to the proposal to purchase the Whangamata 4D blocks.

5.13 On 8 May 1914 Bowler wrote to the Under Secretary of the Native Department about the proposed purchase of the Whangamata 4 blocks:

"Many of the owners will be found to have a sufficiency of other land, but in view of the recent sales in the district, there is, I think, likely to be a difficulty in finding other land for all. As No. 4D is the largest and apparently the most valuable block, I think the best course would be for the Minister to direct the board to summon a meeting of owners,

and if a resolution is carried the purchase of the smaller areas can be taken in hand. As the owners of 4D are rather scattered it would be difficult for me to" obtain their views except at a meeting."

*Refer Tulloch #11, p61.*

- 5.14 In spite of being advised that there was an insufficiency of land, in April 1915 the Crown called a meeting of 4D owners to discuss the purchase of the block.

*Refer Tulloch #11, p62.*

- 5.15 The meeting was attended by six or seven of the 67 owners of which four or five voted in favour of the sale and two others voted against the sale.

*Refer Tulloch #11, p62.*

- 5.16 Following the meeting of owners Bowler suggested to the Crown that if they were still interested in the land it might have better success acquiring the land if it approached owners individually and that the Crown's operation should be protected by proclamation.

- 5.17 On 30 August 1915, under Part XIX Section 363 of the Native Land Act 1909, the Crown issued the first of a series of proclamations prohibiting the alienation of Whangamata 4D to any party other than the Crown, re-imposing the Crown's right of pre-emption over the Whangamata 4D block.

*Refer Tulloch #11, p62, and Alexander, Wai 100, #A8, p118.*

- 5.18 On 17 December 1915 a second meeting was held whereby a majority of 21 owners accepted a renewed Crown offer to purchase the interests in Whangamata 4D. Bowler again repeated his earlier warning of the year before that it would be "practically impossible to convince the board that all

owners have a sufficiency of other land". Eight of the 21 owners including



Poihaere declined to sell and subsequently applied to have their interests in the block partitioned out.

*Refer Tulloch #11, p62 and Alexander, Wai 100, #A8, p 118.*

5.19 Despite Bowler's warning with regard to the sufficiency of other lands, the Crown continued in its pursuit to acquire all of the Whangamata 4D block.

5.20 The Under Secretary for the Native Department wrote to the Waikato-Maniapoto District Maori Land Board ("the Land Board") for confirmation of the resolution of assembled owners to sell the blocks.

5.21 The Land Board's investigations in 1916 showed that Poihaere owned interests in approximately 85 acres in addition to her interests in Whangamata 4D. These 85 acres included 81 acres of Hikutaia 1G3.

*Refer Tulloch Statement of Evidence #11, p3.*

5.22 In April 1916 the Board advised that they had been unable to find sufficient "other lands" for some of the owners.

*Refer Tulloch #11, p62.*

5.23 In an attempt to assist the owners, the Land Board advised them to have their interests partitioned to avoid their lands being sold. The Under Secretary for the Native Land Department reminded the Land Board Registrar of its statutory boundaries and duties with regard to any owner not dissenting in writing being deemed to have consented:

"I may say that, to avoid confusion, it seems highly desirable that your board should comply strictly with the provisions of Section 100(2) of the Native Land Amendment Act 1913 (as amended by Section 4 of the amending Act of 1915), which provide that any owners not dissenting in writing shall be deemed to have consented thereto. It is not the province of the Maori Land Board to go beyond the plain

intention of the legislature and to waive the necessity for the written dissents required by law. The giving to the objectors of a certain time within which to apply for partition seems quite irregular in such cases where no dissents have been filed. Any prospective hardships on the Natives in such matters can easily be obviated if the Boards will have a few simple forms of dissent drawn up and ready at each meeting of assembled owners for signature by those objecting to alienation.

In future cases, I shall be glad if your Board will ascertain definitely within the seven days allowed by law that natives are entitled to rank as dissentients. Your Board can then confirm or disallow the resolution insofar as it affects the whole of the interests in the block (excluding dissidents and those have no other lands), and thus any undue delay will not take place."

*Refer Alexander, Wai 100, #A8,p118.*

- 5.24 Proclamations prohibiting private alienations were extended in August 1916 for six months and in February 1917 for eighteen months.

*Refer Tulloch #11, p62.*

- 5.25 The Land Boards investigations into the "other lands" of the willing Whangamata 4D sellers showed that the majority failed to meet the criteria of having sufficient other lands for their support. The Land Board therefore informed the Under Secretary of the Native Department that it could not confirm the resolution of sale of 8 July 1916.

*Refer Tulloch #11, p63.*

- 5.26 Submit that it is perhaps no coincidence that the 1916 list of "other lands" was not updated between 1916 and 1922.

*Refer Tulloch #11, p64.*

5.27 It is during this time that all of Poihaere's land interests in the Whangamata 4D3, 4D4B1 and 4D4B2A blocks were purchased by the Crown.' Given that the Maori Land Board would not confirm the sale of Whangamata 4D, it is somewhat surprising that Poihaere, who had declined to sell her interests to the Crown in 1915 sold the majority of her interests in Whangamata 4D3 to the Crown on 16 May 1917. Poihaere retained ten of her 162.5 shares.

*Refer Tulloch #11,p66.*

5.28 It is interesting to note that the price paid by the Crown for Whangamata 4D3, 152.5 acres, was £95.6s.3d. This price is extremely low when compared to the price paid of £500 for Hikutaia 1G3 comprising 81 acres, 1 rood and 14 perches by private sale. Submit that this is an example of how the Crown's proclamations prohibiting private alienations kept the land prices low. This worked in favour of the Crown and thus disadvantaged Poihaere from obtaining the best price possible.

*Refer Tulloch #11, pp 89 - 90.*

5.29 CB Jordan, the Under Secretary of the Native Department noted on 16 May 1917 that court fees and survey costs were to be deducted from the purchase money to be paid to Poihaere and other 4D3 sellers. Survey costs were imposed upon the Maori vendors.

*Refer Tulloch #11, p66.*

5.30 On 29 May 1917 Jordan wrote to the Registrar of the Waikato-Maniapoto Land Board asking the Board to reconsider its decision allowing further purchases of the Whangamata 4D blocks knowing full well that some of the owners did not have sufficient "other lands". He stated:

"Under the circumstances, I have to ask whether the Maori Land Board cannot see its way to reconsider its decision in the matter. Section 7 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1915, appears to be applicable in this case. If the Maori Land Board,

having regard to all the circumstances, considers that the land is not likely to be a material means of support to the native owners it can grant confirmation notwithstanding the fact that any of the natives may technically become landless. The position would appear to be that a sale of the land would make them hardly more landless than they were before."

He further explained that:

"The matter is one of importance to the Crown".

*Refer Tulloch #11,p67, Tulloch #11 A, docF10p116.*

5.31 The Land Board declined Jordan's request.

*Refer Tulloch #11, p67.*

5.32 On 28 March 1918 Jordan reported to the Under Secretary for the Lands and Survey Department that there was "no prospect of acquiring 4D No. 4, as the bulk of it is owned by natives who have insufficient other lands". On 18 December 1918 the Native Land Purchase Board decided that the purchase of Whangamata 4D4B be re-opened.

*Refer Tulloch #11, p68.*

5.33 On 7 July 1920 Whangamata 4D was partitioned to create Whangamata 4D4B1. Poihaere's ten shares equating to ten acres included in the Whangamata 4D4B1 block was purchased by the Crown for £7.10s at 12s.6d an acre.

*Refer Tulloch, #11, p69.*

5.34 Poihaere succeeded to her father Hakipene's interests in Whangamata 4D4B comprising 138.1 shares on 5 March 1920. The court awarded her 138.1 shares in 4D4B2.

*Refer Tulloch, #11, p69.*

5.35 On 15 July 1920 Bowler noted that he had been offered Poihaere's share in Whangamata 4D4B2 and was taking steps to acquire it.

*Refer Tulloch, #11, p69.*

5.36 The memorandum of transfer was signed by Poihaere on 20 July 1920. Poihaere's interest of 138.1 shares equating to 132 acres, 2 roods and 32 perches was partitioned out as Whangamata 4D4B2A on 25 October 1921 and proclaimed Crown land on 14 January 1922.

*Refer Tulloch, #11, p69.*

5.37 Submit that Poihaere's name is very clearly written on the document however according to Poihaere's daughter Kathleen Chalmers, her mother could not write her name in 1939. She recalls teaching her mother how to sign her name.

*Refer Chalmers #A2, p10.*

5.38 Submit that this raises doubts about the validity of the memorandum of transfer given that if Poihaere could not sign her name in 1939, how then was it possible for her to sign her name in 1920.

5.39 Tulloch could find no record to indicate that the Land Board updated their information on Poihaere's "other lands" before she sold her final interests in Whangamata 4D4B1 and 4D4B2A in 1920 and 1921.

*Refer Tulloch, #11, p70.*

5.40 Submit that had the Land Board updated their information on Poihaere's "other lands" then the Crown would have been prevented from alienating the last of her interests in the Whangamata 4 block rendering her landless.

Land acquired in lieu of survey charges

5.41 In December 1898 the Crown sought an order in favour of the Crown for survey fees of 5s.6d from the owners to Hikutaia IA.

5.42 Tamati Paetai is recorded as having paid survey fees for the subdivisions of Hikutaia IA (£5), IB (£15) and 1C (£5) at a Native Land Court hearing on 1 April 1889.

*Refer Tulloch, #11, p47.*

5.43 This was objected to by Tamati Paetai who argued that the land had been taken by the Crown to pay for the survey costs when the original title to the block had been issued. Further to this Paetai declared that James Mackay had assured the original owners of Hikutaia 1 that they would not have to pay survey costs.

*Refer Tulloch, #11, p49.*

Public works acquisitions

5.44 Under the Public Works Act 1876 title holders whose land was taken for public works purposes could claim compensation for their loss. Claimants had to apply in writing within five years of the taking of their land. Tulloch suggests that while the later statutes did not discriminate against Maori specifically, that the "bureaucratic nature of the process and complexity of Maori title would have made it difficult for Maori to secure compensation".

*Refer Tulloch #11, p82.*

5.45 Three acres, 32 perches was deducted from Hikutaia 1 for roading. Tamati Paetai is recorded on 3 April 1889 raising the issue of rates being charged on the land taken for roading. No record has been found of any compensation paid by the Crown for the loss of this land.

*Refer Tulloch, #11, pp47 - 48.*

5.46 Two acres were deducted from Hikutaia 1G3 which was owned solely by Poihaere. No documentation could be found with regard to her being compensated for the two acres.

*Refer Tulloch, #11, p82.*

## **6 0 THIRD CAUSE OF ACTION - THE MAORI REAL ESTATE MANAGEMENT ACT 1888**

6.1 Hakipene and Paea died in the late 1890's. In 1897 Tamati Paetai, a second cousin to Hakipene was appointed as a trustee for Poihaere pursuant to Section 3 of the Maori Real Estate Management Act 1888 ("MREM Act")

*Refer brief of evidence of Suzanne Savage and Refer Tulloch #11, pp 12, 48 - 49.*

6.2 This legislation allowed minors interests to be alienated by trustees who were appointed to look after their interests. Section 5 of the MREM Act provided that:

"Trustees may sell and convey lease or let the trust estate or any part or parts thereof:

Provided that execution of a conveyance or lease by trustees shall not be effectual until a Judge of the Supreme Court shall have endorsed upon the deed intended or purporting to be such conveyance or lease,

either before or after execution by the Trustee, a minute of his approval of the terms of such sale or lease: ..."

- 6.3 Tamati Paetai was appointed as trustee for Poihaere's interests in Hikutaia IA and 1G and Whangamata 4.

*Refer Tulloch #11, p 12.*

- 6.4 Tamati Paetai had interests along with 21 other owners including Poihaere in the Hikutaia 1A2 block.

- 6.5 On 3 March 1898 Tamati Paetai on his own behalf and as Poihaere's trustee signed a memorandum of transfer conveying Poihaere's one share, or one acre interests in Hikutaia 1A2 to Charles Alley for £76. Poihaere was allocated £4 for her interests. Evidence suggests that there is doubt as to whether or not Poihaere ever received the money.

*Refer Tulloch #11, p51 and Refer Tulloch, Document Bank #11 A, p46.*

- 6.6 On 24 November 1916 Poihaere applied to the Maori Land Court to summons a meeting of owners to discuss the possible sale of the Hikutaia 1A2 block only to be advised that she was not an owner. Poihaere did not know that Hikutaia 1A2 had been sold in 1898.

*Refer Tulloch #11, pp51 - 52.*

- 6.7 On 19 November 1925 an investigation of the title was undertaken by the Native Land Court. The order appointing Tamati Paetai as Poihaere's trustee in the block was produced. The two memoranda of transfer signed by Paetai on Poihaere's behalf were also produced as evidence indicating that the procedure had been followed when the land was sold.

*Refer Tulloch #11, p51, Tulloch, Document bank #11A, pp 41 - 44.*



6.8 Submit while on the face of it the correct legal process was followed, the reality was that the MREM Act 1888 allowed trustees to alienate land belonging to minors. Trustees were entitled to sell the trust estate but had to obtain the approval of a judge to do so. Tamati Paetai obtained an order to transfer the block from Maori owners into private hands. The MREM Act further served as a mechanism of transferring land into private ownership. It gave trustees the absolute power to alienate minors land interests.

7.0 **PREJUDICE SUFFERED**

7.1 The social and economic impact of Poihaere's land alienation by the Crown has had a devastating effect on the claimants.

7.2 Hakipene had interests in 15 blocks totalling in excess of 22,740 acres. Poihaere had shares in 18 blocks totalling over 7,279 acres.

*Refer Tulloch M1, ppl5-17.*

7.3 From a total of 377 acres in the Hikutaia and Whangamata blocks, 291.2 acres were purchased by the Crown.

*Refer Chalmers #A2, p8.*

7.4 Poihaere is recorded as having received £693.10s.6d and yet her children did not appear to benefit financially from any of the sales of her lands. In fact one of her sons, William Savage states that Poihaere "... thought she had been diddled. ..."

7.5 The claimants are landless in spite of having ancestral associations with the Hikutaia and the Whangamata areas.

7.6 Land interests retained by Poihaere include:

- (a) Hikutaia 1C, an urupa.
- (b) Rangihapara B, currently administered by an ahu whenua trust.
- (c) Tuhua (Mayor Island) placed under a trust in 1959.
- (d) Uriwha, a reserve.

*Refer Tulloch, #11, pl7.*

7.7 Poihaere's children were included as owners in 1953.

*Refer Tulloch, #11, pl7.*

7.8 None of these lands are controlled by Poihaere's children and nor can they be utilised as an economic base.

7.9 This landlessness has meant a dislocation of all of the descendants of Hakipene and Poihaere, for example Kathleen Chalmers lives in Palmerston North, William Savage lives in Rotorua, Edna Wheeler lived in Napier, Dianne Chalmers lives in Masterton, Suzanne Savage lives in Rotorua and Noel Wheeler lives in Napier.

7.10 The dislocation has had many affects, they being:

- (a) Lack of a land base for economic sustenance.
- (b) A loss of te reo, tikanga Maori and matauranga Maori.
- (c) The fragmentation and wide dispersal of the claimants throughout the country.

7.11 The Tribunal will hear evidence about Poihaere's children who grew up isolated from and ignorant of their ancestral lands and associations.

*Refer Chalmers #A2, pp8-21.*

7.12 This process has in turn led to almost complete destruction of the claimants ties with their iwi of Ngati Maru and Ngati Pu and their identity as Maori.

*Refer Chalmers, #A2, p 15.*

7.13 The children of Poihaere hold very few happy memories of their years of growing up in the Coromandel. Those years are full of hurtful and painful memories as a result of being landless, living in rented accommodation and as squatters.

*Refer Chalmers #A2, pp 15, 16 and 18..*

7.14 The result of this process of dislocation and disenfranchisement has led to the current generation of this whanau feeling a sense of loss of identity, shame, hurt and sadness.

*Refer Chalmers, #A2, pp 13, 16 - 21.*

## **8.0 THE EVIDENCE**

### Technical evidence

8.1 Dr Tracy Tulloch will be presenting the sole technical report on behalf of the claimants. Ms Tulloch is a historian based in the School of Social and Cultural Studies at Massey University, Albany Campus. She also holds a PhD in History from the University of Canterbury.

### Tangata whenua evidence

- 8.2 Tangata whenua evidence will be heard from Suzanne Savage.

### Social and Economic Impact Report - A Whanau Perspective

- 8.3 Dianne Chalmers has a Bachelor of Arts Degree in Community and Family Studies from Otago University and has a diploma in Business Studies from Massey University. She has compiled a whanau report which gives insight into the social and economic impact on the children of Poihaere as a direct result of land alienation.

### Other evidence

- 8.4 The Tribunal will also hear and see other evidence. This will come in the form of a video presentation which is scheduled to take place after Ms Chalmers presentation. Ms Chalmers will be assisted in the presentation by her cousin's Suzanne Savage and Noel Wheeler.
- 8.5 Ms Chalmers, Ms Savage and Mr Wheeler are the great-grandchildren of Hakipene and the grandchildren of Poihaere. They are the children of Kathleen Chalmers, William (Winkie) Savage and Edna Wheeler whose interviews have been attached to the Social and Economic Impact Report for Wai 704, A Whanau Perspective by Ms Chalmers.

## **9.0 CONCLUSION**

- 9.1 The history of this whanau is not without tragedy. They have suffered to the extent that they maintain minuscule remnants of their ancestral land over which they have no control. They have all grown up in a school system that taught them to be ashamed of their language, their mother, their cultural identity and who they were. Growing up dislocated from their ancestral lands which has led to a loss of identity, dislocation and widespread fragmentation.

9.2 The telling of their story is the first part of healing the hurts and sadness they experienced growing up in the Coromandel in poverty. The recognition of their ancestral rights and associations in the Coromandel by the Waitangi Tribunal, the Crown and others is the second part of that process. The third and final part of that process will be the return of land or compensation for land that will necessarily involve redress on the part of the Crown.



TH MOXON  
Counsel for Wai 704



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