IN THE WAITANGI TRIBUNAL **WAI 100**

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Claims by HUHURERE TUKUKINO and OTHERS known as the HAURAKI CLAIMS

SYNOPSIS OF SUBMISSIONS ON BEHALF OF THE CLAIMANTS

MAY IT PLEASE THE TRIBUNAL:

1. The Wai 100 claim is a comprehensive claim on behalf of all of the tribes of Hauraki in respect of all the lands and resources of those tribes, covering all of the Treaty breaches perpetrated by the Crown against them. It is one of the largest and most complex claims yet to be heard by a Waitangi Tribunal. It covers territory which is familiar to the Tribunal - old land claims; raupatu and the like. And it covers issues that are either completes novel or have not been comprehensively dealt with by the Tribunal in the past. Foremost among these is the Crown treatment of Maori rights in Hauraki mineral resources, for they are in many ways the linch pin of this claim.

2. The Hauraki claim will also be the first comprehensive regional assessment of the depredations of the Native Land Court and the Crown purchase policy which was its twin.

3. It is impossible to do these immensely important issues any justice at all in this opening submission. Instead, it is intended merely to introduce the subject matter and to await the commencement of each separate claim theme for comprehensive opening submissions on a theme by theme basis.

4. **The Iwi of Hauraki**

4.1 The tribes of Hauraki came in many waves. In the first wave there was Ngati Hako, Ngati Hei and Patukirikiri. To the south was Ngati Rahiri Tumutumu of the Mataatua canoe with their own traditions. To the Tamaki side was the descendants of Torere - the Ngai Tai. There were others as well as whose lines remain in the uri of today, but whose separate corporate existence has faded - Nga Marama, Te Uri O Pou, Ngati Huarere are examples of this. The mana of all these iwi remains embedded in the land today.

4.2 In the second wave came the descendants of Hotonui and Marutuahu - the great Marutuahu Confederation of Ngati Maru, Ngati Tamatera, Ngati Whanaunga and Ngati Paoa. Their fires burned from Moehau to Te Aroha and from Matakana to Matakana and remain to this day. The Marutuahu migration was closely followed by the arrival of Ngati Tara Tokanui also of Tainui who settled in the south.

4.3 In the third wave came Ngati Pukenga, the great fighters otherwise known as the Tawera and Ngati Porou the traders from the east.

4.4 Although the tribes have separate identity and mana, that should not detract from the unity they have achieved despite their diversity. For all are inextricably interconnected and you will see much evidence of this in the

evidence of whakapapa experts this week. Though they are many and their traditions are diverse, they are brought together as one in the Kupenga Nui O Hauraki.

5. The Hauraki Lands

5.1 The Wai 100 claim covers the entire rohe of Hauraki. The rohe of Hauraki has at its centre the Coromandel Peninsula and Tikapa Moana, or the Hauraki Gulf. It extends from Moehau Mountain to Te Aroha Mountain, and from Matakana in the south to Matakana in the north. The lands of Hauraki interlink with those of the Waikato Confederation to the west; Ngati Haua to the southwest; Ngai Te Rangi, Ngati Ranginui and Ngati Pukenga of Tauranga Moana to the south and southeast; and Ngati Whatua, Ngati Wai and Ngapuhi Nui Tonu to the north and northwest.

5.2 Hauraki claims district does not encompass the entire Hauraki rohe, however will be the focus of the Wai 100 claim in these hearings. By decision of the Tribunal the Hauraki claims district was redefined by this Tribunal. It was stated to include Maramarua and the East Wairoa confiscation blocks. It excluded Matakana to Takapuna, Central and South Auckland, Aotea and Katikati.

6. The Claimant

6.1 The claimant in the Wai 100 comprehensive claim is Huhurere Tukukino, rangatira of Ngati Tamatera and spokesperson for all of Hauraki in his time. Huhurere Tukukino lodged the Wai 100 claim on behalf of all the people of Hauraki in 1986. A copy of the claim is in Volume 1 of the Wai 100 evidence.

6.2 In 1988 the Hauraki Maori Trust Board Act was enacted. This followed a three year consultative process undertaken by the iwi of Hauraki. The outcome of the consultative process was a broad concensus that a

representative body should be established to provide for the needs of the Hauraki people.

6.3 Section 4 of the Act provides that the descendants of the following tribes are the beneficiaries of the Board:

Ngati Hako;
Ngati Hei;
Ngati Maru;
Ngati Paoa;
Te Patukirikiri;
Ngati Porou ki Harataunga ki Mataora;
Ngati Pukenga ki Waiau;
Ngati Rahiri Tumutumu;
Ngai Tai;
Ngati Tamatera;
Ngati Tara Tokanui; and
Ngati Whanaunga.

6.4 In 1989, Huhurere Tukukino charged the Hauraki Maori Trust Board with the task of researching and prosecuting the Hauraki claim on behalf of himself and on behalf of all the people of Hauraki. The Hauraki Maori Trust Board accepted responsibility for the prosecution of the Wai 100 claim. On 25 September 1991, Huhurere Tukukino returned to Hawaiki.

6.5 Additional claims have been filed by Toko Renata Te Taniwha and the Hauraki Maori Trust Board for and on behalf of those tribes of Hauraki having an interest. Claim Wai 373 relates to the Hauraki interests in the Waikato raupatu and in particular, the Maramarua State Forest and was filed on 22 September 1995. Claim Wai 374 relates to the Hauraki interests in central Auckland lands and in particular to the railway lands. It was filed on the same day. Claim Wai 650 relates to the Hauraki interest in the Athenree State

Forest in the Katikati Te Puna Block and was filed on 24 December 1996. Wai 373, 374 and 650 are, for all material purposes, to be treated as if they are part of a comprehensive Wai 100 Hauraki claim.

6.6 Toko Renata Te Taniwha and the Hauraki Maori Trust Board have also lodged a claim in respect of the proposal to introduce special legislation to turn Tikapa Moana into a national marine park. When it came to the attention of the claimants that this legislation was to be introduced into the House in the very near future, an application for urgent hearing was lodged. A judicial conference was held with this Tribunal on 13 August 1998. As an outcome of that conference, the Crown has agreed to establish a joint working party with the claimants to resolve the issues of concern to iwi including Hauraki iwi. As a result the Minister of Conservation has given a personal undertaking that the Bill will not be introduced into the House until Christmas 1998 at the earliest. Hauraki are continuing negotiations in respect of this matter and reserve the right to seek to have this matter brought back on if those negotiations do no produce a result which is, in Hauraki's view, Treaty consistent. Wai 728 should also be treated as part of the comprehensive Wai 100 claim.

6.7 Other iwi, hapu, whanau and individuals from the region have lodged general and specific claims in their own right. The following claimant groups have given a mandate to the Hauraki Maori Trust Board to prosecute the Wai 100 claim on their behalf:

Wai 96 - lodged by Ngeungeu Te Irirangi Zister concerning Wairoa and Otau blocks;

Wai 110 - lodged by Rebecca Fleet concerning the Ngati Hei claim;

Wai 148 - lodged by Ngaruna Ronald Mikaere concerning Manaia School site;

Wai 174 - lodged by Patricia Bailey concerning Nga Whanau O Omahu claim;

Wai 285 - lodged by Shane Ashby and others concerning the Manaia blocks claim;

Wai 418 - lodged by Rikiriki Rakena and others concerning Waikawau purchase claim;

Wai 464 - lodged by Gavin Kaird and others concerning Pakirarahi No. 1 block;

Wai 661 - lodged by Shane Ashby and others concerning Wharekawa East No. 2 block;

Wai 663 - lodged by Denis Tanengapuia Te Rangiawhina Mokena concerning Te Aroha lands.

6.8 In addition iwi representatives from all 12 Hauraki iwi have signed mandate documents in support of the Board's prosecution of the Wai 100 claim; marae and kaumatua from throughout the district have also executed mandate documents; and the Board's mandate to prosecute Wai 100 has been confirmed at numerous hui over the last 7 years.

6.9 The Hauraki Maori Trust Board established the Hauraki Treaty Claims Project Team to research the Wai 100 claim. The statement of claim, together with the research and supporting evidence are set out in 11 volumes which comprise Part 1 of the Hauraki Claims Casebook. It is expected that the research and supporting evidence prepared by the Hauraki Maori Trust Board will be of use to the other Hauraki claimants. Many of the other Hauraki claims registered with the Waitangi Tribunal provide particular examples that reinforce the breaches of the Treaty of Waitangi detailed in the Wai 100 claim. In effect, the Hauraki Maori Trust Board is providing the platform upon which all of the other claimants can then build.

7. Jurisdiction

7.1 The jurisdiction of the Tribunal to consider claim is set out in s.6 of the Treaty of Waitangi Act 1975:

> *"(1) Where any Maori claims that he or she, or any group of Maoris [sic] of which he or she is a member, is or is likely to be prejudicially affected -*
>
> *(a) By any ordinance of the General Legislative Council of New Zealand, or any ordinance of the Provincial Legislative Council of New Muster, or any provincial ordinance, or any Act (whether or not still in force), passed at any time on or after the 6th day of February 1840; or*
>
> *(b) By any regulations, order, proclamation, notice, or other statutory instrument made, issued, or given at any time on or after the 6th day of February 1840 under any ordinance or Act referred to in paragraph (a) of this subsection; or*
>
> *(c) By any policy or practice (whether or not still in force) adopted by or on behalf of the Crown, or by any policy or practice proposed to be adopted by or on behalf of the Crown; or*
>
> *(d) By any act done or omitted at any time on or after the day of February 1840, or proposed to be done or omitted, by or on behalf of the Crown -*
>
> *and that the ordinance or Act, or the regulations, order, proclamation, notice or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the principles of the Treaty, he or she may submit that claim to the Tribunal under this section. "*

7.2 The Hauraki Maori Trust Board alleges:

That the claimant was a Maori and, for the purposes of the Wai 100 claim, was representative of all the iwi of Hauraki.

That the Board and each of its 12 elected iwi representatives are Maori and, for the purposes of the prosecution of the Wai 100, are representative of the 12 iwi of Hauraki, their hapu, whanau and individual constituents who are its beneficiaries.

That the claimant, the Board, the iwi, hapu, whanau and individual beneficiaries have been and remain prejudicially affected by the Acts, Regulations, policies, practices, acts and omissions of the Crown set out in paragraph 3 of the statement of claim which were enacted, promulgated, formulated, undertaken, done or omitted in breach of the principles of the Treaty of Waitangi.

That the prejudice suffered by the Hauraki iwi, hapu, whanau and individuals was and remains gross, unjustifiable and disproportionate when compared with the burden of Treaty breaches borne by other iwi and when contrasted with the benefits which have accrued to the Crown and the nation consequent to that prejudice.

That the prejudice was and remains such that Hauraki is entitled to immediate and substantial reparations to restore the mana and economic base of the Hauraki people including:

(a) The return to Hauraki of all Crown lands within the Hauraki rohe.

(b) The return to Hauraki of all state enterprise land within the Hauraki rohe including any former state enterprise lands subject to s.27B of the State Owned Enterprises Act 1986.

(c) The return to Hauraki of all crown forest assets within the Hauraki rohe; the payment to Hauraki of all undispersed rentals held by the Crown Forestry Rental Trust; and a payment to Hauraki of the maximum level of compensation payable by

virtue of the provisions of the First Schedule of the Crown Forest Assets Act 1989.

(d) The immediate recognition of Hauraki traditional resource rights to the foreshore and seabed lands within the Hauraki rohe and Hauraki rights to control all access to and exploitation of those resources.

(e) The immediate recognition of Hauraki ownership of all minerals and geothermal resources currently claimed by the Crown within the Hauraki rohe.

(f) Monetary reparations.

8. The Grievances

8.1 The grievances are set out in paragraph 3 of statement of claim. The statement of claim provides a map of the consequences of contact between Hauraki Maori and the Crown from the early 1800s right through until the present day. These consequences have been most aptly summarised by Professor Bill Oliver in the following terms:

> *"Maori [of Hauraki] born in the 1840's would have been - if lucky enough - still alive in the early 20th Century. A single life time would have encompassed a series of major transformations - a brief time of prosperous commerce with the colonial capital, a time of war and blockade, the falling of the great forests, the gold rushes and the establishment of the gold industry, the decline of the Maori and the increase of the settler population, a series of major local outbreaks of diseases accentuating a situation of persistent ill health, the loss of all but a small proportion of the land, and a general condition of economic decline and social dislocation. It is important that the pace and the extent of change be kept in mind; together they constitute a complete revolution, political, social and economic, affecting the whole of life. "* (Oliver, Wai 100 evidence, Volume 10, p.2)

8.2 The Crown effected this revolution by various means; some illegal such as the raupatu of Hauraki lands; others legal such as enacting legislation and establishing an administrative infrastructure whose primary purpose was to overcome Hauraki rangatiratanga over their lands, their gold, their forests, their rivers and their own people. All were a gross breach of the Crown's protective responsibilities under the principles of the Treaty of Waitangi. By 1885 the revolution was all but complete.

9. Old Land Claims

9.1 The first test of the crown's integrity in Hauraki was posed by the establishment of the Old Land Claims Commission to determine the validity of Pre-Treaty land transactions. In signing the Treaty of Waitangi, the Crown had set itself the task of ensuring that Maori were protected from entering into arrangements harmful to themselves. The evidence establishes that the Crown failed to fulfil this obligation in its treatment of old land claims.

9.2 An estimated 80,000 acres transferred out of Hauraki hands as a result of the Pre-Treaty transactions and the series of government enquiries, recommendations and adjustments which followed (Anderson, Wai 100 evidence, Vol 4, p.52). Hauraki Maori did not intend to completely dispossess themselves of these lands. Rather, from the perspective of Hauraki Maori in 1830, the transactions were intended to incorporate Pakeha into the community. Tenure was dependent on ongoing presence and contribution to that community.

9.3 That this was the understanding of Hauraki Maori is shown by the numerous disputes which arose when supposed "grantees" attempted to on-sell lands. It was clear that Hauraki did not consider that their interests in the land had ended. As late as 1862, Maori at Coromandel were demanding the return of land which had been sold by the original "purchaser", McGregor. He had been married to a local woman of rank who had since died. (Anderson, Wai 100 evidence, Vol 4, p. 108).

9.4 The Old Land Claims Commission established by the crown to enquire into the validity of the Pre-Treaty transactions failed to take any account of Maori customary law. The Commission did not consider the question which lay at the very heart of the transactions - whether Hauraki intended to sell the lands under inquiry. Further, this mechanism, which had supposedly been established by the crown for the protection of Maori, delivered thousands of acres of land into crown hands under the guise of "surplus lands". The acknowledged purpose of "surplus lands" was to raise revenue for the crown and promote colonisation by the onsale of lands for which the crown had paid nothing.

9.5 The crown retained "surplus lands" even in circumstances when serious questions were raised concerning the validity of the original transactions. The two major instances of crown acquisition of large areas of surplus lands derived from particularly questionable circumstances. As an outcome of the enquiry into the Fairburn transaction in South Tamaki, the crown acquired 75,415 acres. There was ample evidence that the original transaction did not entail a simple transfer of land from Maori to Fairburn. Rather, it was intended to promote peaceful settlement of the area and Fairburn signed a formal addendum to the Deed promising to return one third of the whole purchase to Ngati Paoa, Ngati Tamatera, Ngati Te Rau, Te Akitai and Ngati Whanaunga. (Anderson, Wai 100 evidence, Vol 4, pp.64-65).

9.6 Despite the continuing objection and protest of Maori to surveys and other actions taken in pursuance of crown grants, the crown failed to further investigate whether or not sales had ever been intended. Subsequent commissions of inquiry, the Bell Commission of 1856 and the Myers Commission of 1948, assumed the legitimacy of the original transactions. As a result of the Bell Commission, original awards in Hauraki were expanded by 12,000 acres. The Myers Commission inquired into the retention by the crown of "surplus lands". However, the Fairburn purchase was not included in its

consideration. Payments were made to quieten the loudest protest. The land itself was never restored to its Hauraki owners.

9.7 The Waitangi Tribunal has already addressed old land claims in the Muriwhenua claim. It found that:

> *"We find that the transactions did not effect, and could not have effected valid and binding alienations. We consider that Maori entered into these transactions with entirely different expectations: that the transactions imposed obligations on the settlers, of which they ought reasonably to have been aware, but which they generally did not fulfil. "* (Muriwhenua Land Report, 1977, p.5)

9.8 The evidence establishes that these conclusions apply to Hauraki with equal force.

10. **Gold**

> *"If we unite together in this way we shall have treasures and riches, become a people and have everything that the heart can desire .... This requires co-operation, mutual aid and assistance .... Your children will be benefited, our children will be benefited ...."* (Daily Southern Cross, 5 June 1867 cited in Hutton, Troublesome Specimens, p. 104)

10.1 When gold was discovered in the Coromandel in 1852, relations between Hauraki iwi and the crown would change forever. The discovery was an opportunity for the crown to deliver on its Treaty promises of partnership and mutual gain. Instead the crown actively undermined Hauraki rangatiratanga over gold, instituting a complex system of mining and access rights which left Hauraki with token financial return for the mineral resources, the mere shadow of their lands and a devastated environment. The crown then pursued the purchase of all that remained for Hauraki, the freehold of the land.

Ownership

10.2 Article 2 of the Treaty of Waitangi guaranteed to Hauraki iwi their rangatiratanga, or full exclusive and undisturbed possession, of their lands, estates, forests, fisheries and other taonga. The evidence will show that gold is

a taonga of Hauraki and that the tupuna who negotiated access to it with the Crown treated it as their own. Following the discovery of gold in 1852 the crown recognised that in light of this Maori attitude, it could not assert its prerogative right without regard for Maori rangatiratanga. However, the crown failed to explicitly recognise and actively protect Maori rangatiratanga of gold. As the balance of power between Maori and Pakeha shifted and the common law became more firmly entrenched the crown asserted its ownership of gold knowing full well that the Hauraki ancestors believed and acted as if they owned the gold. The current assertion of the crown prerogative to gold contained in s.10 of the Crown Minerals Act 1991. It is the current restatement of the theft perpetrated by the crown in Hauraki 130 years earlier.

1852 Agreement

10.3 In 1852 the crown secured access to the Coromandel Goldfield by agreement with Patukirikiri, Ngati Paoa and Ngati Whanaunga interests. The agreement was lacking in detail but it provided for administration of the gold field lands by Crown officers in return for certain payments.

10.4 It represented a compromise between the crown's desire for control of gold and recognition of the existing Maori right. It fell far short of the Treaty guarantees. The crown carefully avoided any express recognition of Maori ownership of the gold. Nor, did the crown either explain or assert the common law prerogative right. Hauraki were persuaded by crown negotiators to hand over control of their lands to the government in return for a 'fair' proportion of the revenues. The system of payment eventually instituted was based on the number of miners occupying the field, rather than royalties for the gold extracted. This was despite the expectation of Hauraki that they would receive full payment for all gold taken from their land. (Anderson, Wai 100 evidence, Vol 4, pp.77-88).

10.5 Though the 1852 agreement was clearly deficient, it could at least be called an agreement. Subsequent crown policy in respect of gold and gold fields retreated from even these inadequate terms. Agreements were imposed, not reached and in the end the use of the term "agreement" was simply dropped, along with the pretense The crown ensured that it, rather than Hauraki Maori received the benefits of Hauraki gold.

The appearance of consent

10.6 The methods employed by crown agents to gain Hauraki consent to the opening of further lands for mining purposes were highly questionable. Not all iwi and hapu with rights in the land to be opened were involved in negotiations. For example, the negotiations for the opening of the East Coast of the Coromandel Peninsula involved Ngati Paoa, a section of Ngati Tamatera, Patukirikiri and Ngati Whanaunga but not Ngati Hei, Ngati Maru and Ngati Porou who also had significant interests in the area.

10.7 Maori were told that they had no choice but to accept the presence of miners and the crown promised protection of their rights only if they handed over control of the land to the government.

10.8 The crown used divide and rule tactics in respect of the opening of Tokatea (Moehau No. 4) to mining. Paora Te Putu, rangatira of Te Matewaru, had refused to hand control over Tokatea to the government for mining. McLean had promised that his wishes would be respected. However, in 1862, Governor Grey broke the crown's earlier promise. The crown sought the agreement of Riria Karepe the other major right holder in the area. Grey arranged for a lease with Karepe's party only and ignored the legitimate claims of Te Hira, to whom Te Putu's mana had passed. (Anderson, Wai 100 evidence, Vol 4, pp 103-106).

10.9 In another instance, James Mackay used the opportunity of the criminal conviction of the sons of one of a chief who opposed mining to force his

consent to mining at Waiotahi. Mackay gave money to Aperehama Te Reiroa so that he could obtain the release of his sons, only on the understanding that this sum was to be taken as an advance on mining fees on that block. It is to be noted that his sons were convicted for assaulting miners. (Anderson, Wai 100 evidence, Vol 4, p. 141).

The terms of the goldfield agreements

10.10 The terms of the mining agreements became increasingly prejudicial to Hauraki iwi. By the time of the Ohinemuri cession agreement of 1875 the bundle of rights which the Crown acquired was so complete as to leave only a shell in Maori hands. The crown acquired:

- The right to dig;
- The right to lease the land if gold was found;
- The right to lease the land required for a machinery site;
- Resident site licences;
- Business licences for stores and hotels;
- Agricultural leases of up to 200 acres;
- The right to lay down water races in order to get the gold out;
- Timber cutting rights;
- The right to lay out townships.

10.11 In effect everything accept the freehold was lost to Maori.

10.12 All of this took place in a context of increasing tension between the crown and "non-sellers" and the use by the crown of tactics aimed at minimising the customary rights which non-sellers held in order to avoid dealing with them. In addition the crown actively fostered a situation of large scale debt among Ngati Tamatera in order to guarantee their consent. History shows that the crown's tactics were highly successful.

10.13 Within 8 years the Crown had acquired the freehold from iwi who were either so burdened with debt that sale was the only option, or from iwi who had been excluded anyway.

Mal-administration of goldfield revenues

10.14 The only benefit left to Hauraki under the goldfield agreements, was the right to receive a "fair" proportion of the revenues. The crown failed to ensure that Hauraki Maori received even the token payments that were provided for in the agreements. The system of collection of revenues instituted by the crown was not accountable to the Maori owners. The Maori owners were expected to subsidise the administrative responsibilities of the crown. There were long delays in the paying out of the sums which were due under the agreements. Large amounts of outstanding monies accumulated as the revenue system fell into neglect. Meanwhile Hauraki Maori were being forced to sell off their lands in order to avoid imprisonment for debts.

Unilateral abrogation of goldfield agreements

10.15 Even the token payments which the Hauraki owners were sometimes lucky enough to receive were steadily eroded by crown policy, legislation and regulations. For example the lands opened by negotiations in 1867-1869 were bought under the Goldfields Act 1866. The Act empowered the Governor to grant long term mining leases. Acting under those powers the crown introduced a system of leases in October 1868 which reduced the number of mining rights required by mining interests to a fraction of the former situation. This resulted in the reduction of the revenues payable to Hauraki Maori. Hauraki Maori objected to this unilateral change to the agreements which they had negotiated. The change was not negotiated. There was no agreement. It was just imposed. Mackay, who had been involved in the original negotiations supported Hauraki in the view that the long term leases flew in the face of the original agreements. (Anderson, Wai 100 evidence, Vol 4, pp 152-155).

10.16 The fact that Hauraki lands were subject to mining legislation and regulations which could be altered at the whim of government, without referral to Maori interests, or the commitments that had been made by negotiated agreement should have increased rather than decreased the protective responsibilities of the crown. But as noted by an observer at the time:

> "*... the Government does not care to watch the interests of the natives ... and the natives are considerable losers thereby... ".* (observation made by local JP in April 1873, cited in Anderson, Wai 100 evidence, Vol 4, p. 167)

Crown acquisition of mineral lands, 1870-1900

10.17 After 1870 the crown pursued a policy of acquisition of the freehold of lands with mineral potential. The crown had no regard to the benefit for Maori of retaining the freehold of these valuable lands. Rather, the crown sought to purchase the blocks as cheaply as possible, keeping Maori ignorant of their mineral potential if possible. Once the freehold had been acquired, all revenues went into the hands of the crown, rather than Maori.

10.18 The crown also pursued the purchase of the freehold of those blocks of land subject to goldfield agreements. It was not that hard. All the useful rights in respect of the land had already been lost. And the collection system for gold field revenues appears to have been so shambolic and so affected by the 1868 changes that sale must have been an extremely attractive option for Maori with towns, mining paraphernalia, and no trees, on their land.

10.19 By purchase the crown could circumvent Maori complaint about the maladministration of their goldfield revenues.

10.20 The crown unilaterally reinterpreted the cession agreements arrogating the sub-surface rights of Hauraki in those lands to the crown on the pretense that the payments made under the cession agreements were for "grant of easement"

only. Hauraki received no payment for the abrogation of the sub-surface rights.

Inquiry and failure to pay compensation

10.21 Hauraki have been struggling to gain redress for the crown's actions with regard to mineral rights, the cession agreements and acquisition of the goldfield blocks for over a century. As a result of the petitions of Hauraki iwi, the matter was referred to the Native Land Court for inquiry and report under s.2 of the Native Purposes Act 1935. The resulting inquiry is known as the MacCormick Inquiry. (Anderson, Wai 100 evidence, Vol 4, p. 165).

10.22 There were great difficulties with the process and parameters of the MacCormick Inquiry. It failed to adequately consider the complaints of Hauraki Maori. It did not consider the issue of Maori rights in the gold. It did not consider the Treaty consistency of the mining agreements and the subsequent land acquisition activities of the crown. The crown denied Hauraki access to the government records. A full analysis of the crown's compliance with its own obligations was therefore impossible.

10.23 Not surprisingly therefore, the inquiry failed to recognise Hauraki ownership of gold and the Hauraki right to miners revenues notwithstanding the transfer of the underlying freehold of the land.

10.24 The inquiry did find that the crown was unable to satisfactorily account for the revenues received and expended by it to Hauraki Maori. The inquiry was also critical of crown agents for leading Maori into "very bad bargains" when they sold the land.

10.25 The inquiry recommended that the crown make an ex gratia payment of between £30,000.00- £40,000.00 in view of "the large sums received by the crown by reason of its purchases of the freehold land previously ceded to it for mining purposes", and questions as to whether Maori had "fully

appreciated the effects of their sales, and the further doubt as to the proper distribution to the Natives of the monies they were entitled to". It is implicit in these conclusions that the crown failed to actively protect the interests of Hauraki iwi and worse, that the crown profited from its own failure.

10.26 The crown failed to implement the recommendation of the MacCormick Inquiry despite the repeated petitions of Hauraki Maori. Hauraki have been forced to bring their grievances to the Waitangi Tribunal as a result.

Resident site licences

10.27 Hauraki lands subject to resident site licences remained under the government's jurisdiction right up to the enactment of Mining Act 1971. Resident site licences gave the holder the equivalent of renewable lease of Hauraki land for trivial rents and for purposes which were not related to mining activities. Hauraki were forced into negotiation and court action in order to free their lands from continuing occupation. Hauraki were eventually forced to accept the compulsory purchase of the occupied sites. The level of compensation hardly reflected the value of the land and loss of income. The compensation was not paid directly to Hauraki rather deposited with the New Zealand Guardian Trust (Anderson, Wai 100 evidence, Vol 4, p. 174-175).

11. Alienation of Thames Foreshore and Seabed

11.1 The opening of the Thames goldfield in 1867-69 had a direct impact on crown policy in respect of Hauraki ownership of the Thames foreshore and seabed.

11.2 In the course of establishing its jurisdiction over the Thames goldfield the crown had acknowledged the rights of Hauraki Maori over the foreshore. Mackay and the Maori right holders had specifically excluded the beach area from their goldfields agreement at Thames. Section 9 of the Goldfields Amendment Act 1868 explicitly acknowledged the crown's need to negotiate with Maori owners of adjacent lands to bring foreshore lands within the jurisdiction of mining legislation.

11.3 However, as pressure for access to the gold which was known to lie under the mudflats grew, and Hauraki Maori expressed reluctance to hand over the mudflats into crown control, the crown retreated from this explicit acknowledgment of Maori ownership.

11.4 The crown unlawfully issued a proclamation, proclaiming all land above and below high water mark to be reserved for crown purposes as a stop gap measure. It was designed to prevent Hauraki from entering into private transactions with their foreshore lands and resources.

11.5 This was followed up by the enactment of the Thames Sea Beach Act which re-imposed the crown right of preemption over the Kauwaeranga foreshore without Hauraki consent. This legislation undermined the ability of Hauraki to strike the best bargains that they could in an open market. But the crown having gained the benefit of its own monopoly did not exercise that monopoly so as to actively protect the Hauraki interest. It used this power instead to exploit Hauraki iwi.

11.6 When Hauraki applied to the Native Land Court for recognition of their customary title to the Kauwaeranga foreshore and seabed the crown failed to ensure that the court gave effect to the full extent of their ownership rights. In the Whakaharatau case (Hauraki MB4, p.202), Chief Judge Fenton identified the elements required in evidence to prove title to the foreshore. In the Kauwaeranga case the Judge himself admits that the elements were proved. But he declined to make an order for absolute property:

> *"I cannot contemplate without uneasiness that evil consequences which might ensue from judicially declaring that the soil of the foreshore of the colony will be vested absolutely in the Natives, if they can prove certain acts of ownership, especially when I consider how readily they may prove such, and how impossible it is contradict them if they only agree amongst themselves".* (Hauraki MB4, p.245).

11.7 The Waitangi Tribunal has summarised the import of Judge Fenton's findings in the Muriwhenua Fishing Claim as follows:

> *"In the Kauwaeranga case the court upheld earlier Native Land Court opinion that the crown's right to the foreshore, like its nominal ownership of the land, was held subject to customary usage until that usage was extinguished. The court had simply to ask whether it was held according to native custom at 1840. However, after a most lengthy and erudite statement of the law as the court saw it and after some comments on the importance of fisheries to Maori, it was held that for reasons of "public policy " (and although the Maori claimants were held to be entitled to the mudflats) the Maori claimants should receive no more than a title to exclusive fishing rights over the area in question."* (Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim,* Wai 22, 1988, p.84)

11.8 It is clear that public interest involved was ownership of the gold which was known to lie below the surface of the foreshore and seabed. Once again Hauraki bore the burden of providing for the broader public good.

11.9 The crown then acted to remove the foreshore from the jurisdiction of the Native Land Court completely in order to prevent any further possible recognition of Hauraki interests, whether ownership or usufructuary. The
crown then enacted s.147 of the Harbours Act in 1878 to preclude the Native Land Court from issuing any title to the foreshore once that proclamation ceased to have effect.

11.10 Having so circumscribed Hauraki rights, the crown then pursued the complete alienation of the Kauwaeranga foreshore. This was in spite of the strong and repeated expression by Hauraki of its desire to retain ownership of this most valuable land and enter into lease arrangements only.

11.11 The crown refused to meet Hauraki claims to payment for anything beyond an exclusive fishing right. Prior to purchase, the crown had recognised the illegal occupation and reclamation of the foreshore. No rental was paid to Hauraki for the use of these sites.

12. **Land Loss**

12.1 As stated in the evidence of David Alexander, the key statistic in respect of land loss is that Hauraki went from 100% land ownership prior to 1836, to 2.6% land ownership today. For the most part it was a "creeping" land loss. However, it was just as devastating for Hauraki iwi as outright raupatu. As observed by Ward:

> "*... the Rangahaua Whanui District where Maori had the least land on a per capita basis in 1939 was Hauraki, followed by the confiscation - affected districts of Waikato and Taranaki, followed by Auckland."* (Ward, *National Overview,* Vol 1, p. 154)

Raupatu

12.2 Hauraki iwi were significantly affected by both the war and the crown confiscation policy which followed, despite the neutral position of the majority of Hauraki iwi.

12.3 The crown imposed an economic blockade across Tikapa Moana which interfered with Hauraki fisheries and trading activities. Settlements along the western shores of Tikapa Moana were subjected to bombardments, the burning of whare and the destruction of cultivations.

12.4 The crown confiscation policy was based more on gaining control of the regions south of Auckland and the overriding of communal title than it was on the political disposition of Hauraki iwi. The crown illegally confiscated lands in which Hauraki held interests in East Wairoa, Maramarua and Katikati - Te Puna (Tauranga).

12.5 The subsequent operation by the crown of the Compensation Court effected the compulsory purchase of the interests of so-called "loyal" Hauraki. For example the claims for the East Wairoa block, which represented a

confiscation area of 51,000 acres, were bought before the Compensation Court in May 1865. At this time compensatory awards could be in the form of money only as there was no provision at the time for the return of land. Those most particularly affected were Ngai Tai who lost thousands of acres of land. (Anderson, Wai 100 evidence, Vol 4, pp. 123-126).

13. Impact of the Native Land Court

13.1 In 1865 the crown established the Native Land Court as a mechanism for the conversion of customary ownership into crown granted title through the Native Land Acts. The underlying intent of the legislation was to defeat chiefly authority and traditional whanau, hapu and iwi based systems of land tenure and thereby facilitate the cheap and speedy acquisition of Maori land. The legislation was entirely inconsistent with the Treaty obligation of the crown to protect the chiefly authority of Maori over their land.

13.2 This new structure was imposed on Maori without any consultation and without providing any role for traditional decision-making processes. In these circumstances the crown was under a responsibility to ensure that the system protected the interests of Maori. No such protective mechanisms were put in place. The effects of the system on Maori were not properly monitored. The defects in the system were in fact essential to its design and actively exploited by the crown.

13.3 The 1865 legislation was designed so that judges awarded blocks to 10 or fewer chiefs regardless of the actual number of right holders. Those chiefs had the legal authority of absolute owners. The legislation failed to accommodate Maori concepts of kaitiakitanga and trusteeship in the construction of title.

13.4 The crown subsequently enacted the Native Land Act 1873 under which the proportionate shares of each individual right holder could be ascertained and bought off one by one.

13.5 The system introduced by the crown inevitably forced Hauraki Maori into debt through the necessity of entering into the expensive and often protracted process of contesting claims in the court in order to protect title. It was impossible for Hauraki Maori to withhold their lands from this system and avoid debt, as the court would hear any application and did not seek out evidence beyond that presented before it. Non-appearance in court could result in dispossession from the land. Non-vendors were therefore burdened with the expenses of attending sittings and had to share the costs of survey.

13.6 Te Aroha provides one example of how Hauraki Maori were drawn into debt by their requirement to defend their title to land. The Compensation Court had awarded the area to a so-called "friendly" section of Ngati Haua in late 1868 - early 1869. Hauraki iwi had been excluded from the title due to the anti-court principles of kingite sections of the tribe. Hauraki were then forced into a round of hearings and rehearings in order to gain recognition of their interests in the land. In the opinion of Judge Smith, a judge in the Native Land Court, the costs entailed in participating in the hearings had been "very great, enough ... to swallow up the value of the land" (cited in Anderson, Wai 100, Vol 4, p. 177). The final result, even for the winners of the court struggle was loss of land.

13.7 The crown failed to respond to the numerous petitions of Hauraki iwi protesting against the role of lawyers and European agents in the land court system and seeking greater Hauraki control over the land court processes. Instead, crown purchase agents exploited the problems of tenure and debt which had been fostered by the Native Land Court.

14. **Government Purchase Policy**

14.1 In 1869-85 the establishment of the Native Land Court was closely followed by the most active period of government purchasing in the Hauraki rohe. During the period of 1869-85, over 300,000 acres of Hauraki land were

purchased by the government (the Anderson, Wai 100 evidence, Vol 4, p.224 and 236). The crown was able to make extensive purchases through the exploitation of the Native Land Court system and the enactment of a series of Immigration and Public Works Acts and amendments throughout the 1870s.

Exploitation of the Native Land Court system by crown purchase agents

14.2 James Mackay was the most active crown purchase agent working in the Hauraki district during the 1870s. His purchase procedure was deliberately designed to undermine the ability of Maori to hold their lands collectively and under tribal control and fully exploited the weaknesses of tenure created by the Native Land Court system. Where possible Mackay made arrangements with individual chiefs under the 10 owner system. Otherwise he scattered money amongst the people "like maize to the fowls", (cited in Anderson, Wai 100 evidence, Vol 4, p.204). The debts were ultimately redeemed by attaching individual signatures to deeds of sale. Individuals were locked into the eventual sale of tribal lands without full community knowledge or the consideration of the interests of all the right holders.

14.3 The practice became known amongst Hauraki Maori as "raihana" or "rations". Hauraki protested that it was not until they were shown the accounts that they had seen "the pit yawning which had been hidden".

14.4 In scattering the money, Mackay promoted the interests of particular groups, picking winners before the Native Land Court had even decided on ownership, and then backing their rights against others. For example, Mackay promoted the interests of particular groups in the Ohinemuri lands, ignoring those of Ngati Hako on the grounds that he considered them to have been "conquered". Rather than being motivated for any sensitivity towards Maori customary law, it is more likely that Mackay ignored Ngati Hako for the reason that they were not willing to sell their interests in the Ohinemuri lands.

14.5 In another instance, Mackay deliberately exploited the tangi of a prominent Ngati Tamatera chief, Taraia in order to build up debts against Ohinemuri lands. These debts were instrumental in the crown obtaining the cession of the Ohinemuri lands and their eventual sale.

14.6 The practice of raihana in Hauraki parallels the practice of "tamana" in the north and "takoha" at Taranaki. These practices have been strongly criticised by the Waitangi Tribunal as:

> *"An unfair practice designed to purchase land as quickly and cheaply as possible, and incompatible with the crown's fiduciary duty under the Treaty".* (Waitangi Tribunal, *Te Roroa Report,* p.60)

Immigration and Public Works Legislation

14.7 The extensive land purchases made by the crown during the 1870s were facilitated by an active programme of public works designed to open up the interior of the Hauraki rohe and break down Hauraki opposition to land sales.

14.8 The back bone of the programme was the enactment by the crown of the Immigration and Public Works Act 1870. This act provided for:

- The taking of land without the consent of Hauraki and without compensation.
- The financial means to make large scale purchases of Hauraki lands.
- The reintroduction by the process of proclamation of the crown right of preemption over lands subject to negotiation between the crown and Hauraki.

14.9 Following the enactment of the Immigration and Public Works Act, over 333,000 acres of the Hauraki rohe were proclaimed as under crown negotiation and therefore closed to private purchase. Hauraki were locked into accepting the lower prices offered by the crown. As noted by Robyn Anderson in her evidence these powers were created for the government's own protection and benefit without any compensatory provision for Maori

14.10 Examples of the use of the Public Works programme to break down Hauraki opposition to sale of land include the use of the telegraph to divide two potential areas of anti-government activity. Telegraph lines were forced through territory on the north bank of the Waihou River, which was held under the mana of Te Hira and Tukukino, two rangatira who were openly opposed to land sale. (Anderson, Wai 100 evidence, Vol 4, p. 192-193). Another example detailed in the evidence was the forcing of a road through Komata in the face of the face of the continued passive resistance of Tukukino. (Anderson, Wai 100 evidence, Vol 4, p.259).

15. Loss of other Hauraki Resources

15.1 Legislative enactment, crown purchase and public works policies also eroded Hauraki control over their other resources such as rivers, timber and mineral springs.

Rivers

15.2 The Crown sacrificed the rangatiratanga of Maori over their rivers to the requirements of the timber industry with the enactment of the Timber Floating Act in 1873. This act provided for the use of waterways by timber companies. The legislation was a response to the successful action taken by Mohi Mangakahia in the Supreme Court preventing a settler who was damaging his eel weirs from floating timber down a small stream on his land unless a toll was paid (Anderson, Wai 100, Vol 4, p.274). The legislation resulted in the destruction of Hauraki eel weirs and damage to cultivations on the river banks. Hauraki objection was dismissed by the crown on the grounds that the law prevailed over Maori custom and traditional usage.

15.3 The crown also enacted the Mining Act 1891 which provided for the dumping of mining debris and cyanide into rivers proclaimed available for that purpose. Proclamations were made in respect of the Waihou and Ohinemuri rivers. No

consultation with Hauraki living on the banks of the rivers took place. The proclamations resulting in the pollution of Hauraki drinking water, the destruction of eel and whitebait fisheries, the destruction of riparian cultivations and wahi tapu and the erosion of Hauraki land.

15.4 The damage to their rivers was not a consequence that Hauraki iwi foresaw when they ceded their lands for mining purposes. Ngati Tamatera petitioned the crown:

> *"When your petitioners ceded the land for mining purposes the Ohinemuri contained pure clear water ... in the consequence of the proclamation in 1895 of the Ohinemuri and Waihou to be places of deposit for tailings, mining debris, and waste water from the mines the river water became contaminated, and so polluted as to the unfit for use by man or beast.*
>
> *... your petitioners greatly fear that if the deposit of such mining tailings, sludge, sand, debris and waste water is not stopped forthwith, that the whole of our lands on both banks of the Ohinemuri River will, within a very short period, be rendered useless for the purposes of cultivation, which will become a matter of ruination and starvation for us. We have very little dry land of any kind left to us, as nearly all the hill country we owned was included in the area ceded for mining purposes".* (Petition of Ngati Tamatera, 1900, quoted in Anderson, Wai 100, Vol 6, p.l 12)

15.5 Hauraki received no compensation from the crown for the damage to their rivers as a consequence of the Timber Floating Act.

The Hauraki delta wetlands

15.6 Hauraki lost their delta wetlands, highly valued for its bird and fish resources as a result of crown purchase policy and public works legislation including the Hauraki Plains Act 1908. Following acquisition, the government drained the wetlands to provide for the development of the dairy export industry.

Timber

15.7 The crown actively encouraged the unchecked exploitation of the timber resource with no regard for the sustainability of this practice. Large quantities

of timber were removed from Hauraki lands under goldfield cession agreements. Hauraki received little, if any, payment for this timber.

Mineral springs

15.8 The crown failed to recognise the full extent of traditional Hauraki rights in the Te Aroha geothermal resource.

Loss of Hauraki reserves

15.9 By the end of 1885 approximately 70% of Hauraki lands had passed out of Hauraki ownership. For the next decade the crown actively pursued the purchase of those lands which had been specifically reserved from sale. The crown enacted legislation such as the Native Land Purchase Act of 1892 and the Native Land Purchase and Acquisition Act of 1893 to streamline the procedures for the removal of restrictions on sale and reduce the requirements for owner consent. The crown failed to fulfil its Treaty responsibility of ensuring that Hauraki Maori retained a sufficient land base for their future needs.

Land loss 1890-today

15.10 In the 1890s the crown continued to actively pursue the purchase of Hauraki lands. By 1930 the land base was all but extinguished. Today only 2.6% of the Hauraki rohe (excluding foreshore and seabed) is in Hauraki ownership. Much of the recollection of living witnesses today relates to losses and effects which occurred during this period. Hauraki, having provided the economic base for the Auckland economy was, during these years, required to further support the nation. Large areas of that which remained were lost for public works such as flood protection and drainage schemes. Further areas were lost for failure to pay rates, in particular where services to those lands were (and remain) non-existent. The court has continued to preside over the fragmentation of the tiny residue of Maori land both by area (partition) and by ownership (succession). That which remains is unevenly distributed among

the iwi and most areas are simply too small to be effectively utilised by those kin groups which own them.

15.11 The brevity of this section does not reflect its importance. The living witnesses of Hauraki today will all confirm one or other aspect of the processes summarised here. The sad reality is however that by the time these processes were brought to bear on Hauraki people it was already far too late. The land base and resource base had long gone and only a remnant remained of the beastly tribal communism so vigorously attacked by settler administrations.

15.12 The result is that these claims burn brightly in the hearts and minds of kaumatua and rangatahi alike in Hauraki.

16. Witnesses

16.1 I will, god willing, be calling 31 witnesses. The evidence will commence with opening statements by Toko Renata and John McEnteer on behalf of the Trust Board. They will be followed by Jim Nicholls who will provide an overview of the various iwi interests throughout the Hauraki area. It is hoped that at the end of his evidence you will get at least a basic sense of how the various iwi and political groupings within Hauraki interrelate and intersect. Following his evidence will be witnesses from the iwi of Hauraki commencing with Ngati Hako and ending with Ngati Porou. The witnesses will take us through the whakapapa and traditional histories and interests of the iwi concerned and summarise the claims advanced on behalf of them. On the completion of the iwi profiles, Josie Anderson will round off for the Trust Board. Then the "technical" evidence will commence as follows:

(a) Dr. Robyn Anderson who will traverse the broad historical themes in the claim.

(b) Mr David Alexander who will assess progressive land loss through Hauraki.

(c) Professor Bill Oliver will look at the social and economic effects on Hauraki Maori of colonisation.

(d) Dr. David Williams will summarise the lego-historical issues in relation to gold.

JV Williams/ FR McLeod
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