

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

A claim by Horimatua Evans on behalf of
himself and his whanau

**BRIEF OF EVIDENCE OF HORIMATUA EVANS
DATED 2001**



**BUDDLE FINDLAY
SOLICITORS
WELLINGTON**

KS FEINT/ DG RANDAL
Telephone: 04-499 4242
Facsimile: 04-499 4141
P O Box 2694 DX SP20201

Introduction

1. My name is Horimatua Evans. I am of Ngati Porou origin, and am connected with Ngati Paoa through my grandmother. **[Mr Evans will give *whakapapa* orally.]**
2. I am a registered rural valuer and an associate of the New Zealand Institute of Valuers and Churchill Fellows. I live in Tauranga.
3. Our *whanau* claim relates to events surrounding our time on Waiheke Island. The Department of Maori Affairs managed a large farm on the island, and we leased it from them in 1984. We believe we should never have been settled there in the first place because the farm was the subject of protest action by Ngati Paoa. It was Waiheke Island's equivalent of Bastion Point. After years of protest Ngati Paoa were successful in getting the land back, and in 1987 we were kicked off unceremoniously to make way for them.
4. Our beef is not with Ngati Paoa, but with the Crown. In effect we subsidised the Crown's Treaty settlement.
5. The whole episode had a devastating effect on our *whanau*, and we lost all our money. We have spent many years fighting the Crown through the courts, but to no avail. We hope that through this claim justice will finally be done, although it is far too late to right many of the wrongs suffered.

Our interest in the farm

6. I first heard about the farm through a newspaper advertisement in April 1983. The Department was looking for "a qualified Maori settler" to farm the block. The Board of Maori Affairs had asked the Department to canvass interest in the farm throughout Maoridom, even though it was on general, rather than Maori, land. It was advertised throughout New Zealand as a Crown lease in perpetuity (L.I.P.). Tainui, Ngati Paoa, and Hauraki all had the opportunity to take the lease, but didn't. (The

advertisement from the *Dominion*, 30 April 1983, is attached as appendix 1.)

7. At the time I owned a lifestyle block, with vineyards, in Gisborne. We had built it up from bare land. I had been in sheep and cattle farming all my life though, and had managed very large blocks before, including the Mangatu Block near Gisborne for about 20 years. I had also been the Director of the Rural Bank from 1972 to 1978, and of the New Zealand Wool Board from 1974 to 1978.
8. My late wife had been coping with cancer for years, but around 1983 her condition worsened and she was referred to a specialist in Auckland, Professor Probert. Although she was still living with us in Gisborne, we were faced with the prospect of frequent commuting between our home in Gisborne and the specialist in Auckland. When I saw the ad I said to her "we should go and live there, so you will get the care you need and I will be able to come across and see you all the time".
9. So I made some further enquiries with the Department of Maori Affairs. It turned out that in the 1960s the government had bought farmland on Waiheke Island from private owners. It was general land, not Maori land, and so had no beneficiaries or multiple owners.
10. Even though it was general land, it was made part of the Maori development schemes, under Part 24 of the Maori Affairs Act. The Part 24 schemes were designed to let the Crown develop Maori land, to bring it up to scratch so it could then be handed back to the *tangata whenua*.
11. There were lots of rules relating to Part 24 land. The Board of Maori Affairs was supposed to do the fencing, for example. They also had the power to give special assistance, under section 460A of the Act.
12. The land had a history of huge losses. The Department of Maori Affairs had farmed the land for 17 years, but it made a profit for only three or four of those years, and lost the government over

\$600,000 during that time. To recover the money they had decided to sell the lease to a Maori person or organisation with a relationship to the land.

13. It should never have been a farm. Being on an island made the cost of transporting stock, fertiliser and other necessities very high. Also, it suffered from extremes of climate, and was much too dry in the summer (see the "brief comment" on the Department's field report, attached as appendix 2).
14. In response to my enquiries the Department sent me a letter setting out the available options (appendix 3), and I applied for a Crown lease of the farm. On my application (attached as appendix 4) I detailed my farming experience and set out my *whakapapa*.
15. From the outset I always had it in mind that we could subdivide the property as lifestyle blocks. That is why we wanted the Lease in Perpetuity, because that would've given us the ability to subdivide the land. The proposal they sent me clearly said it would be a Crown lease with a perpetual right of renewal.

Terms of the lease

16. We had an interview with the Maori Land Committee, who was considering our application (the minutes of the interview are attached as appendix 5). The Chairman was Hori Forbes, who was also chairman of the Tainui Trust Board. Our application was successful (see letter from Maori Affairs attached as appendix 6).
17. We had the skills to manage the block. I had run big farming blocks in Gisborne for years. The whole *whanau* was to come and live on the island, including my son Brent, who had studied agriculture at Massey. On the island Brent met Brigid, a vet, who also came to stay with us.

18. The maximum deposit that the Department was asking for the lease was \$80,000 - the purchase price being about \$800,000 (it was \$782,500). When they saw we had around \$325,000 from the sale of our property in Gisborne, and some other cash in the pipeline, they asked for the lot. We were to pay the rest of the debt off over time - that was \$457,500. So we had already handed the Department \$325,000, and we would also put over \$100,000 more into the farm during the next year or two.
19. We received assurances from the Department of Maori Affairs' Director in Hamilton, Dixon Wright, and members of the Board that the Department would provide further assistance to help us farm the property. For example, they said that the debt could be written down if we got into financial trouble.
20. One problem during the negotiations was that the Department couldn't give us proper title. This was because the Crown was creating bush reserves on the property - the reserves had to be resurveyed, and the dedicated walkways allowing public access had to be defined (see map, appendix 7). They didn't want to finalise the lease until the reserves were officially recorded. So a temporary lease was drawn up. When the surveying was completed a new lease would be drawn up, and our title would be perfected.
21. At that point the rent figure would supposedly be adjusted to take into account the reserve land, which we couldn't use. The figure would be backdated, because the reserves were to be out-of-bounds from the beginning, and a refund of rent would be paid to us (see paragraph 2 of Department's letter, attached as appendix 8). In the meantime they gave us a temporary lease, which would be replaced after about a year.
22. Under the Crown lease, the lease in perpetuity, we were to go in as settlers. But when we got there, when we got to Auckland to sign the lease, they made it clear that it was going to be a Part 24 lease. This meant that we would not be able to subdivide the

land as we had planned, and there were lots of other restrictions on us.

23. They also said we would have to do the fencing, after it was earlier represented to us that Maori Affairs or the Commissioner for Lands would do it (I attach a letter from the Department dated 12 December 1983 as appendix 9). (Later the Department had the cheek to suggest that the fences were an asset to us, see letter attached as appendix 10.)
24. This news was a real blow to our plans. But we felt we were committed by then, because we had already sold our farm in Gisborne. We had to give vacant possession of our Gisborne property on 1 January 1984, and settlement date for Waiheke was 1 February 1984. Also, it was my late wife's wish to see us settled on the island, and we didn't want to delay it any more. We decided to try and make a go of it. We had to get doctors in to check that she had the capacity to sign the lease at all. Our solicitor flew up from Gisborne with all the papers.
25. But despite our misgivings about the terms of the lease, we knew there was still a new one to be drawn up, when the survey was finished. I was pinning my hopes on some of the terms we wanted being inserted in the new lease. Especially, I understood that there was still a possibility that we could get a lease in perpetuity. As it happened, we were denied any opportunity of that.

The first signs of opposition to our settlement on Waiheke

26. We visited the property in May 1983. The Farm Manager for the Department was Mr Don Wright. He was very uncooperative, and told us very little about the affairs of the property. We received a similar reception when we visited again in September 1983.
27. We learned that an "anti-Evans" campaign was being set up by the Department's Head Shepherd on the property, an Australian

named Gary Blair. The Waiheke County Council was used as a base by the protesters (see article from the *Herald*, attached as appendix 11). People were encouraged to sign the petitions against our family, which were kept at the Council's offices.

28. In September 1983 Gary Blair had called public meetings, and lobbied politicians, the Board, and the Ombudsman, to try and stop the Department settling us on the farm.
29. Blair wanted the status quo - he wanted the farm to continue to be run by the Department. At first we weren't sure why, but then we discovered a huge problem for us - there were cannabis plantations all through the large reserves of land on the farm. We found the plantations in the bush, with canopies like bird netting over them, so they couldn't be seen from the air.
30. Some of the unemployed people on the island were used by the Department to work on the farm, under the government's PEP schemes. The PEP workers used to harvest the drugs, and this was condoned by the Department's Farm Manager. It was a big industry, supplying not only the island but also downtown Auckland.
31. The Department had put in a new airstrip a short time before we settled on the land. It cost them about \$25,000, and I told them it shouldn't have been put in. We had to pay for it as one of the improvements on the farm. It was built along a razor back ridge, which was crazy because the soil was still moving beneath it. Of course, the land subsided while we were on the farm, and this put large cracks in the strip.
32. Before that happened, though, the strip was used by topdressers and also quite a few mysterious airplanes. We recorded some of their registration numbers - they came from all parts of the country.
33. We ran into a lot of resistance on a number of levels, because our arrival meant that the cannabis growers were losing their livelihood.

Opposition from Ngati Paoa

34. Even before we moved in we had heard that Ngati Paoa wanted the land back (see *Herald* article attached as appendix 12), but this was before the days of Treaty settlements so we didn't think the Crown was likely to do anything about the protests. This was reinforced by the fact that the Department assured us that they would stand behind us. My lawyers had written to the Department in October 1983 expressing our concern about a Ngati Paoa petition that had been presented to Parliament. The petition urged Parliament to "negate" the proposed lease and return the land to Ngati Paoa. We asked the Department what protection our *whanau* would have if Parliament took steps to upset the proposal (letter attached and marked "13"). They said that problems would not arise if I accepted the offer, and said that the Ngati Paoa claim was just a storm in a teacup (see letter, appendix 14). I accepted the offer on that basis. Later we found that the Department had been looking into giving the land to the Tainui Trust Board in early 1983 (see the Department's 3-year review, attached and marked "15".)

Protest on our arrival

35. We were to take over on the farm on 1 February 1984. At that time, right before Waitangi Day, all the protests were on. A *hikoi* had left Ngaruawahia headed for Waitangi and was near Auckland City. Another group of protesters arrived at Waiheke (see *Herald* article, appendix 16). They came over and occupied the land, and called on members of the *hikoi* for support in forming a human blockade. The Department's Farm Manager, Don Wright, invited them to stay in the main shearers' quarters, and even fed them on mutton from the farm.
36. Dixon Wright (as opposed to Don Wright, the Farm Manager) was the Director of the Department of Maori Affairs in Hamilton.

The Manager later told me that Dixon Wright had also given the protesters full authority to come and stay on the land.

37. The Farm Manager also contacted the Northern Drivers' Union and the Seamen's Union to arrange a picket, so that our belongings couldn't be transported over to the island. Luckily our carrier was not a union member, and our possessions reached Waiheke safely.
38. The police eventually agreed to help me get onto the land. We couldn't get in the front, so we went around the back entrance, about half an hour's drive away. The Farm Manager Don Wright was standing there with the protesters, behind a gate that was heavily chained and padlocked. Wright said "don't cut that padlock". He also said they had full authority to stay on the land until the protesters' claims had been resolved.
39. We didn't want to get involved, so the police talked to them. The protesters were standing there waving their banners. A lot of Maori had come over to the island to protest. They didn't know that we were Maori too, they thought we were Pakeha. The atmosphere was pretty hostile.
40. We drove back to the front of the farm, and the protesters were there again. The police commander said on a loud-hailer that whoever walked off would be able to go free but whoever stayed would be arrested. They ended up arresting them all.
41. We couldn't understand it - the Department and its Farm Manager were supposed to assist us in our settlement, but they did the opposite.

Ngati Paoa's claim to the Waitangi Tribunal

42. Everyone knew that Ngati Paoa wanted the land on Waiheke back. I first met with Ngati Paoa in January 1984, at the office of the Department of Maori Affairs in Hamilton. We had a good, friendly talk. I understood how Ngati Paoa felt, after all I am

Maori too, and it is the same all over the country - we want back what is rightfully ours

43. As early as July 1984 I knew that our days were numbered, after hearing Richard Prebble on the hustings during the election campaign. I was at an election campaign meeting where he promised that if Labour got in, Ngati Paoa would get their land back. This got Labour the popular vote.
44. After the Waitangi Tribunal got jurisdiction to look at historical claims, Ngati Paoa were straight in with a claim. They had their hearings that year, 1985. It was really pushed through - the hearings were scheduled for March. They eventually went ahead in September. When the Tribunal had its hearings, we heard of it through the press. I said to my boys "we should be there - we are descendants of Ngati Paoa too."
45. So we went there and asked the Tribunal if we could make a presentation. I spoke for over an hour. I said that if ever they decide to hand the block back to Ngati Paoa, we wouldn't object. When the Tribunal retired, Eddie Durie called me in and we had a talk about the situation. He and another Tribunal member Ed Nathan recommended that we and Ngati Paoa should get together to resolve the situation.
46. We did meet with Ngati Paoa a number of times in 1985, 1986 and 1987. We agreed that we would let them have the lease. We would have gone to the Department jointly to resolve it. V had a meeting in Auckland before the Tribunal's report came out, which was properly advertised and everything. Everyone resolved that the Evans *whanau* would give up the lease so the Crown could return the land to Ngati Paoa, and that the Crown through the Board would negotiate the amount of compensation we would get. The agreement was handed in to the Tribunal (I attach it as appendix 17).
47. There was no animosity between us and Ngati Paoa, we were on

the same wavelength. The Tribunal's ruling didn't come out until June 1987.

Life on the farm - fanning difficulties

48. We settled on the farm in February 1984. Most of the Evans *whanau* was there: me, my boys Brent and Richard, my daughters Anita and Georgina, and my sister Mary. My brother Albert was there as well - he had come over from Auckland and his son Tony had come up from Gisborne with us. We all upgraded the shearers' quarters on the farm for Albert and Tony to live in. Samson Te Whata and his wife Debbie were there too. Sam is like a son to me, and he came and worked on the island when it was the shearing off-season. We were a real Maori *whanau*, everyone working for each other.
49. Straight away we had problems with the farm. Our first big job was to fence all the existing reserves. They had native bush in there, and we had to fence it all off so that we could get clean title. Because of the opposition from the local political elements on Waiheke, we couldn't get anyone to work for us. We had to get other family members in to come and help us.
50. We soon saw that we didn't have enough water for farming purposes. To make things worse, just before we settled the Department had sold off bits and pieces from the farm, including all the water troughs and fittings and a lot of polythene piping, posts, battens and wire. I protested to the Farm Manager and to the Department, because they had no right to remove water troughs, especially at the height of summer. My protests were ignored, and we had to replace all these things, at considerable expense to us.
51. It also turned out that the only water on the farm was in the springs in the native bush reserves. As they had been fenced we had to reticulate the water, which cost a fortune. I complained about this to the Department (see their file note, appendix 18),

but they didn't listen.

52. The previous management of the farm by the Department had left many ongoing problems. One problem was the number of sheep on the farm: the Department had 4,500 breeding ewes on the property. As far as I was concerned the maximum carrying capacity of the farm was about 3,100 breeding ewes, along with the normal numbers of ewe hogget replacements. There were large losses of stock each year caused by facial eczema and the harsh conditions on the island. We learned that the Department's practice was to counter the losses by going out and buying replacement animals each year. This was clearly bad farm management and completely uneconomic (see my letter of 18 December 1985, appendix 19).
53. The Department had sold off the farm's heifers in January 1984 just before we took possession. This meant that there would be a gap in the farm's beef production a couple of years down the line. So we had to buy some replacement heifers - it cost us over \$20,000. The Department admitted its error and approved our purchase of replacements, but never reimbursed us.
54. It was a term of the lease that we would control the gorse on the property. When we went on the land you could see very little gorse around - the Department had recently completed an eradication programme. Also, we went on in February, during a hot summer. There was no evidence of gorse on the property at all - what remained after the Department's programme had all burnt off in the sun.
55. We soon discovered though that the gorse removal was purely cosmetic. It turned out that the PEP workers had just trimmed the surface growth, and the massive root systems were left untouched. When the autumn rains came in April and May, the re-growth was quite unbelievable. It just sprung up from nowhere.
56. We tried everything to control it, but the Council wouldn't let us spray. We hacked down acres of gorse. We spread bales of hay over it, to encourage the stock to graze there and trample what

was left. In the end we introduced a herd of goats to try and control the gorse (I attach a Departmental file note about this as appendix 20), but that didn't work either. What people didn't understand is that to control the gorse on the island required close cropping or spraying every single year. That was simply impossible, given our financial constraints and the economic climate at the time.

57. A survey was completed of the reserve lands on the farm. It was supposed to be started before we settled the farm, but by May 1984 they hadn't started, and we had to insist on it. We knew how important it was to have proper title, especially after Labour got into power, with its radical farming reforms.
58. The survey took them about a year to do, but then the Waiheke County Council refused to approve the survey. They wanted to hold up the whole process. Sandra Lee was quite high up in the Council, and she was an outspoken critic of our settlement on the Island. At the end of 1984 the Chief Surveyor in Auckland told me that the Council was awaiting the decision of the Waitangi Tribunal, and didn't want to give us title to the land for that reason. The situation was the same in 1987 -I attach a letter from the Commissioner of Lands as appendix 21. There was a strong protest element on the Council, and I'm sure that played a factor.
59. So we kept paying the rent that wasn't adjusted. In fact it was never adjusted, and we were never refunded. That wasn't so important, though, as having a clear title, which would have enabled us to pay our way.

Financial troubles

60. We were becoming increasingly strapped for cash (I attach a Department file note, appendix 22). Our debt grew and grew, the interest rates were crippling. The banks started to withdraw their facilities, because of the uncertainty of the title (see letter from Dixon Wright, appendix 23). Even the banks were waiting for the Tribunal decision. The BNZ had given us a facility of \$120,000, then after the

ruckus started they chopped it back to \$75,000, and then cut it off all together.

61. That happened at the same time as Dixon Wright advised the Bank that the Department was going to re-enter the farm. The

people at the Bank told me he'd been to see them in December 1986. It was a cruel twist - the banks started returning our cheques just before Christmas. Straight after that, in January, we started to receive from the Department demands and notices that we had breached the lease agreement. I'll talk more about those soon.

62. In the meantime, let me tell you that the years following 1985 were very hard ones for farmers in New Zealand, and we were no exception. The special assistance the Department had promised us as settlers came to nothing. Interest rates rose from 11 to around 28 percent.

63. Despite all our troubles on the farm, though, we maintained an excellent quality of stock (refer paragraphs beneath "Stock", appendices 24 and 25).

Bureaucratic troubles - negotiations for transfer of lease

64. By 1986 we were in some pretty serious financial difficulties. In order to look after the farm we had been forced to borrow mone at extremely high interest rates, and the creditors were breathing down our necks. I tried everything to settle the matter with the Department of Maori Affairs. We wanted to put the property on the market, and sell our interest in order to pay off our debts (refer appendix 26), and the Department had discussed this possibility with us (appendix 27), but weren't very keen on the idea (appendix 28).
65. We had a meeting at the Department's offices in Hamilton, on 2 April 1987. Dixon Wright had called the meeting and all the creditors were present. We had already looked into getting our debt to the Department discounted though - I attach advice from the Department

(appendix 29) and a note from an earlier meeting (appendix 30).

66. I went along to this meeting with my daughter, Georgina. We talked all day, and the Department took a very hard-line attitude. They refused to let us sell our interest, even though everyone else saw it was the best way to go forward. Dixon Wright got very bolshy about the whole thing, but in the end was forced to go with the majority. A resolution was passed which gave us the right to market the property.
67. It was Government policy at the time to uphold the resolutions passed at those meetings - a yellow paper had been issued. The policy stated firstly that these 'debt restructuring, rehabilitation and relief meetings would be held with rural people with debt issues, and secondly that the resolutions passed at those meetings would be binding on all the parties.
68. But then the Department did everything they could to obstruct progress on the resolution. It took ages to get a final answer from them on whether or not we could sell, because the resolution went back to the Board of Maori Affairs for its approval. In the end the Board overturned it, and took away our only hope of paying back the farm debts. Apparently the Department officials had caught wind of what the Waitangi Tribunal was about to recommend in the Waiheke matter.

The Waitangi Tribunal's Waiheke Report

69. Everyone was waiting for the Tribunal's decision, which came out in June 1987. The Crown was trying to cut a deal with Ngati Paoa, who were virtually camped in Wellington.
70. The Board realised that the whole situation would be tidier and the Crown would be better off if it was back in possession of the farm. It is all there in the minutes of Board meetings. The nearer the Tribunal got to publishing its decision, the more anxious the Department and the Board were to see us off the land. I attach minutes from Board meetings throughout 1987 as appendices 31 to 46.

71. In June 1987 the Tribunal's decision came out, which restated our agreement that we would relinquish the farm. We had already agreed this with Ngati Paoa, in accordance with *tikanga*.
72. The Report also said that we were an innocent party, and that the Crown shouldn't absolve its wrongdoing against Ngati Paoa by mistreating us. But in the end that's exactly what the Crown did, it dispossessed our *whanau* to fix its own political mess.

The Kawhia meeting

73. On 8 July 1987 we had a meeting in Kawhia, which was called by the Department following the release of the Tribunal's report. It was there that everyone agreed that we would be paid our *koha*, our original deposit of \$325,000. In addition to that, though, we had made other initial payments into the farm, about another \$100,000 of our own money, and had put all our money into the farm while we were there.
74. The date for the Kawhia meeting was fixed by the subcommittee of the Board, which included Sir Graham Latimer and Sir Robert Mahuta. We were to meet at the Department's offices in Hamilton to hammer out the handover of the farm and our compensation. The date was set, but Hori Forbes had died and his *tangi* coincided with the day we were supposed to meet. Everyone was going to the *tangi*, so the subcommittee decided to reconvene the meeting at the Kawhia Hotel. My brother Albert accompanied me to the meeting.
75. After the funeral we reconvened in a spare room at the hotel. All the main players were there, the Department's Director Dixon Wright, its Field officer Mike Davis, John Tamihere (who was the Department's solicitor at the time), Bruce Robinson and Mrs Tinkler from the Department, as well as Sir Graham, Bob Mahuta and Richard Fox from the Board (I attach the minutes as appendix 47). We had had the *poroporoaki* at the *tangi*, and we continued speaking in Maori for part of the meeting. At the end of a long discussion Sir Graham moved the resolution that we be paid out the *koha*.

Bob seconded.

76. I remember the resolution, which was stated in Maori. It was this:

"He tika i whakataungia e te Poari Maori kia whakahokia atu ki a koe me to whanau te moni i whakatakotohia e koutou, ara \$325,000."

77. A fair, literal English translation would be: "We, the Board of Maori Affairs, wish to effect as of now the return to you and your family of the money which you laid down (to the Board), in other words \$325,000."

78. It meant that we were to exit the block with dignity, we were to go away with the *mana* that we went there with, and the *koha* that we had put down be returned to us. Everyone understood the gist of it, even the non-Maori speakers at the meeting.

79. The debts would be covered by what they took over - they would get the livestock, the machinery and plant, and the improvements. Bruce Robinson even wrote a report to the Board that set it out (appendix 49). The Department would pay our *koha* of \$325,000 back, and write off the rest of our debt to them, which was about \$580,000 by that time. That amount, and most of the other debts we had from the farm, would be covered by the value of the stock and the improvements on the farm.

80. We would still lose the farm and a lot of money, but we were quite happy to come out with what we had put in, because we had had a hell of a time. Albert and I both understood what had gone on, and the significance of the resolution. We left Kawhia in high spirits.

81. I remember that meeting clearly, I wrote the resolution down when I was there and it was fixed in my mind from that day on. I remember saying to my sister Mary, "it's all over, we're going, we're gone".

82. Shortly after the meeting I went to see Dixon Wright at Hamilton to organise the handover (I attach Mike Davis' file note as appendix 50). He blew up at me, and said "it won't be as easy as that". He was very bitter about it. He felt shamed because he thought we had gone over his head.
83. The next thing I heard was that the full Board of Maori Affairs had approved the repayment of our deposit, but had decided that we had to cover what they termed our "outside farming debts" (see minute, appendix 51). These were greater than my deposit, so I would still have come out of the deal bankrupt. Their offer was completely unacceptable.
84. These "outside farming debts" were the debts we had accrued in getting the farm up to scratch, and maintaining it as best we could. I couldn't believe they expected us to pay for these - they should have paid for some of these in the first place, like those replacement heifers and the fixtures they had sold off, and also they were going to receive the benefit of any improvements we had made.
85. So I went back to them, and we entered into negotiations. These went on for a couple of months, but were never to amount to anything, as it turned out (I attach correspondence, appendices 52 to 55).
86. At that time the Department of Maori Affairs was about to be replaced by the Iwi Transition Authority. Many people at the Department were very worried about losing their jobs in the restructuring, and were starting to look out for their future.
87. Mike Davies was one of them. He, along with Dixon Wright in Hamilton and Peter Little at Head Office, orchestrated our removal from Waiheke. Mr Davies had overseen the farm operation before we took it over, and had taken umbrage to the Evans *whanau's* presence on the island. It later transpired that he would again supervise the Waiheke block - this time when it was in the hands of Ngati Paoa, after he himself had overseen our eviction.

88. In the process the Crown wrote off the debts of Maori development schemes. They wrote off over \$30 million in debt that Maori had to the Crown (refer appendix 56). We weren't to receive the benefit of this write-off, though.

Alleged breaches of the lease

89. In January 1987 the Department had started to issue section 118 notices under the Property Law Act - they are notices that require you to perform your lease, or else. The notices said we were in breach of the terms of our lease. These kept arriving throughout 1987, despite our best efforts to stave them off. In the end the Department's agents did re-enter, and gave several reasons for their actions.

90. First there was the rent. In February of 1987 we got a notice alleging several breaches of the lease, including non-payment of the rent. A month later we were told that they wouldn't re-enter because we had paid the arrears in rent by then - about \$35,000 (I attach the Department's letter as appendix 57).

91. Then later on, after the Tribunal had given its decision, the Department issued another notice. (I attach the Department's notice as appendix 58). It said that rent was again overdue - the amount this time was less than \$7,000. We had been paying rent that year under protest, because we were still paying for the reserve lands that had been fenced off, that we couldn't use. Even so, we were pretty sure that the rent was up to date.

92. Also, the Department knew that the farm income was seasonal. The arrangement with them was that we would pay the rent after the shear of the main ewe flock and the sale of the weaner steers. By the end of January 1988 we would've had about \$100,000 from those sales, easily enough to cover the rent, which was traditionally due then.

93. But the Department was determined to get rid of us. When they re-entered there was even enough wool already baled to cover

the outstanding payments. It didn't matter to them though, they just wanted us off.

94. Ironically, it turned out that the Department of Maori Affairs had mis filed our payments, and in fact our rent wasn't overdue at all. Not one cent. It wasn't until later, after the Court of Appeal decision, that we found that out. (I attach calculations prepared by Commercial Management as appendix 59).
95. Next, they said we hadn't paid the rates for the property. Again, we didn't think it was fair that we should be paying rates for the land in the reserves.
96. Also, the rates demands were being sent to the Department, which the Land Valuation people thought was still the lawful occupier of the land. The whole time we were on the farm we never once received a rates demand from the Waiheke County Council.
97. Another thing was insurance premiums. We paid them at first, but then the Bank started dishonouring our cheques. I explained this to the Department and I remember them saying they'd pay the premiums.
98. They also said we had breached another term of the lease, which stated that I had to live on the property at all times. It was true that I had found outside employment in 1985, but there were good reasons for it. Our debt on the farm was so large that I needed an outside income to earn a living for my family, and to keep putting money into the farm. Also, I felt that my two sons were ready to settle in and lead their own lifestyles. In 1985 I said to Brent and his partner Brigid "you take over the family farm and the house". It worked really well at first - in 1985 we had a great year.
99. The Department knew all about my outside job, and never said anything. The job was in Mangakino, and I was short-listed with

four other candidates. One of them was Dixon Wright, the Director of Maori Affairs. Before the job interview I spoke with him and said that I was willing to pull out, so he would have a better chance. He said I should attend the interview, in fact he insisted. In the end I was the successful candidate. I don't know what Wright thought of that, but certainly he knew all along that I had outside work, and didn't mention it or complain until 1987, when they wanted to get us off the farm.

100. They also took issue with our fencing. One reason we hadn't completed the fencing was the delay with the surveying, but overall we had put up many miles of new fences to comply with the lease. The section 118 notices completely overlooked that fact.
101. Another reason given for re-entry was that we had failed to control the gorse on the property. I have already talked about the Department's eradication programme, which did nothing more than leave us with an invisible problem. We did all we could, but without being able to spray, or find willing workers.
102. Fixing the breaches would have been impossible, the demands were a real joke. We felt all the breaches were technical, and just excuses to get rid of us. It didn't seem so funny, though, when they stormed onto the property.

Re-entry

103. When they re-entered we were completely taken by surprise, because we were still in the middle of negotiations with the Department. We were trying to persuade the Department to compensate us for our losses in exchange for us leaving the farm. The Department re-entered on 16 November. (I attach the Department's authority to re-enter and determine lease as appendix 60).
104. It was like an army operation. They'd flown in the Department officials - a musterer and an assessor, and hidden them on the island. Mike Davis was supervising them, nailing up the notices on the front gate and on the house. They had their own dogs and horses with them.

They had even alerted the police that they were re-entering the farm. We had no idea though - we were still in negotiations with the Department.

105. Sam Te Whata rang me in Mangakino and said they had come in, and they were mustering the stock. I had to try and get from Mangakino, but I didn't arrive there until about midday. I asked what the hell was going on, and the officials there said they'd seized the property.
106. Three agents for Wrightson NMA came in straight after the Department officials, and carried out the valuation - they came and helped with the muster, they helped yard the stock, and they did a tally.
107. Wrightsons was one of my main creditors at the time. No independent valuation was performed. Normally when a valuation is done, the current owner of the stock gets a valuation done, the recipient of the stock does one as well, and you go to mediation to work out what to do with any discrepancy between the two.
108. They didn't give us the value we were due for the calves and heifers. On Waiheke the lambing and calving happens about two months earlier than on the mainland, on account of the terrible dry conditions in summer. So towards the end of November all the lambs and calves are ready for weaning, ready for sale at the end of November and in early December. When the valuation was done, this wasn't taken into account at all. The calves were run in with the cows, meaning that the calves were not counted at all. They were top class too, our stock.
109. The sheep were ready for shearing too, and we didn't get any credit for that. In my professional estimation, their valuation was about \$100,000 to \$120,000 short.
110. So they did a really rough count, and they later admitted that their procedures were wrong. But they said that at the end of the day it didn't really matter, because we owed it all to the Department anyway.

Other avenues for redress

111. So I went back to Mangakino, but it was not the end of the struggle for me. I kept trying to negotiate with the Department. It went on and on, but they were in a position of such power - they had taken the land back, and they had our money. (I attach extracts from the minutes of the Board meeting held on 9 August 1989 as appendices 61 and 62 and the Department's letter dated 17 September 1992 as appendix 63).
112. After years of trying to resolve the issues in the Maori way, I eventually had no choice but to go to Court. (I attach the statement of claim as appendix 64). We had our High Court hearings in February 1991. Justice Wylie was sympathetic to our case, but said that legally the Department could re-enter, because of our technical breaches. (I attach the judgment of Wylie J as appendix 65).
113. We went to the Court of Appeal next. The judges there also said that we were morally in the right, but that they couldn't help us legally. (I attach the judgment of the Court delivered by Hardie Boys J as appendix 66).
114. After we found the missing rent payment, we went back to the High Court. Tompkins J also suggested that the Crown do something to fulfil its obligations. (I attach the judgment of Tompkins J as appendix 67).
115. Since then I've written to MPs, I've been to every Minister of Maori Affairs that has been, also to Winston Peters. (I attach correspondence with MPs and Ministers of Maori Affairs as appendices 68 to 76 inclusive). Winston said that budgetary constraints were the only thing holding us back from the pay-out we deserved.

116. I've also been to the Ombudsmen, who recommended to Ngatata Love, CEO of Te Puni Kokiri, that we be settled out. Dr Love accepted that there was some basis to our claim, and even asked Cabinet for approval to make a special one-off payment to us. (I attach correspondence with the Office of the Ombudsman as appendices 77 and 78).
117. Despite all of this we have never been compensated. (I attach a letter from the Department of Affairs dated 10 August 1989 as appendix 79).

Impact on the *whanau*

118. The Department cleaned us out. They virtually ruined me and my career. I was bankrupted, through no fault of my own. (I attach the judgment of Master Hansen dated 18 April 1994 as appendix 80). I lost all my directorships (of several Maori incorporations and trusts).
119. The whole affair has also had a terrible effect on every other member of the *whanau*. The Department of Maori Affairs' treatment of us has left a feeling of betrayal and distrust. We were unceremoniously kicked off the farm, which was our home, and is the final resting-place of my late wife. Nothing has been done to memorialise the place where my wife's ashes are buried. Half of the money we lost was hers, and one reason for this claim is that my children want her memory honoured.
120. What really rankles me are the breaches of *tikanga Maori*- being forced to leave our home when we were negotiating to go anyway. It didn't have to come to that.
121. My daughters are both aggrieved, my eldest daughter Anita and Georgina. Since our eviction I have heard from Anita about once a year, it's like she can't bear to be reminded of the suffering of her *whanau*. She was bankrupted too. Georgina followed her own career path and left New Zealand. She is the only one who keeps in touch. They ask me, what have I done about their mother? I say "nothing" - what can I do?

122. My son Brent couldn't get far enough away from what had happened to us - he packed up and went to Australia. I get to see him once in a blue moon.
123. My youngest boy Richard stayed with me and I tried to get him focussed on choosing a proper career path. But he couldn't believe that we'd lost everything, our home, our livelihood. In the end he never came to grips with it, and he departed this life at a tragically young age. The doctors told us his illness was stress-related. (I attach a letter to Samuel Ellis & Co, solicitors, as appendix 81).
124. When my wife passed away my sister Mary came to the island to look after me. She lived with us because we had both been widowed. When the Department re-entered Mary had to go to Mangakino too.
125. The *whanau* has also cared for my wife's mother throughout this time. She too suffered greatly, through losing her daughter and her grandson, and seeing our family split apart.

Why we are making the claim

126. In hindsight, the Department shouldn't have settled us on the farm. They knew that the land wasn't ready to make anyone a profit. They were just after a quick buck to recover their own debts from the farm. Based on my experience there, I believe the property was never economically viable as a farm.
127. Also, they knew about the competing claims to the block, the Ngati Paoa claim. They knew, or at least they should've foreseen, what the Tribunal would recommend - that the land be returned to Ngati Paoa. Even though in 1984 the Tribunal didn't have jurisdiction to look into Ngati Paoa's claim, the Department definitely saw the writing was on the wall. The political climate was changing, and the Maori land movement was going from strength to strength. In 1984 the Labour Party campaigned on the basis that the Tribunal would be able to look at historical claims, so you can

see that it was a topical issue, and really just a matter of time.

128. We feel that we subsidised the Crown's Treaty settlement to get Ngati Paoa back onto the land. (I attach an extract from the *Sunday Star* dated 12 March 1989 as appendix 82). We paid for a lease over tough farmland, and they kicked us off when they needed to, without compensation. This was after they reversed the settlement suggested by a man with the *mana* of Sir Graham Latimer.
129. Their re-entry was totally contrary to the Maori way. We were in the middle of negotiations, and were ready to do it all properly, but they just turfed us off the land, our home. It was also unfair because they said we hadn't paid the rent, when we had - they exaggerated all our defaults under the lease.
130. Once we were gone, they didn't give us a fair valuation for the livestock and the improvements on the farm.
131. We want the Crown to acknowledge the wrong they effected on us.
132. We also want our deposit money back, but so that it has the same purchasing power as when we gave it to the Crown. We want compensation for the debts we owed and still owe. And finally, and most importantly, we want to be compensated for the years of hell we've gone through.

DATED THIS

DAY OF

2001

HORIMATUA EVANS