In the Waitangi Tribunal
Taihape: Rangitikei ki Rangipo Inquiry

Wai 2180
Wai 378
Wai 382
Wai 400

In the Matter of the Treaty of Waitangi Act 1975

And

In the Matter of the Taihape: Rangitikei ki Rangipo Inquiry (Wai 2180)

Specific Claimant Closing Submissions on Landlocked Lands on behalf of Wai 378, Wai 382 and Wai 400

Dated 10 February 2020

Morrison Kent
Lawyers
Wellington and Rotorua

Wellington Office
Persons Acting : Dr B D Gilling
Telephone : (04) 472-0020
Facsimile : (04) 472-0517
Box : 10-035
DX : SP20203

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May it please the Tribunal

Introduction

1. These are the closing submissions concerning landlocked lands for:

   (a) Wai 378[1] a claim by the late Henry Tiopira Matthews and Wero Karena on behalf of those Māori who were owners of Owhaoko C3A, C3B, C6, C7 and D2, as well as Te Koau and Timahanga, and on behalf of Ngati Hinemanu and Ngai Te Upokoiri;

   (b) Wai 382[2] a claim by Wero Karena on behalf of himself and the Trustees of the Owhaoko C7 Trust and Ngati Hinemanu and Ngai Te Upokoiri and the hapū of Ngati Kahungunu; and,

   (c) Wai 400[3] a claim by the late Ranui Toatoa, Greg Toatoa, Rhonda Toatoa and Wero Karena on behalf of Nga Hapu o Heretaunga ki Ahuriri.

2. These submissions will illustrate that whenua owned by the claimants as part of Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri is inaccessible. The owners have been denied their right to enjoy, develop, control and benefit from their whenua for generations.

3. The claimants as owners turn to the Waitangi Tribunal for help. They are frustrated, angry and upset. All actions they have taken to access their whenua has been futile.

4. The lack of access is a breach of Te Tiriti o Waitangi.

Acknowledgments

5. The claimants wish to acknowledge the late named claimants, Henry Tiopira Mathews (Wai 378) and Ranui Toatoa (Wai 400), who passed before these claims could be heard in this Tribunal.

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[1] Wai 2180, #1.2.10, Amended Statement of Claim of Wai 378, dated 19 August 2016.

[2] Wai 2180, #1.2.7, Amended Statement of Claim of Wai 382, dated 19 August 2016.

[3] Wai 2180, #1.2.8, Amended Statement of Claim of Wai 400, dated 19 August 2016.

6. The claimants also wish to acknowledge that other uri, whānau and hapū have progressed issues unique and specific to them throughout this inquiry.

7. Counsel wish to acknowledge the claimant's many hours of mahi which they, their witnesses and whanau have given for the progression of Wai 378, Wai 382 and Wai 400. The claimant's mahi is unpaid and over and above the claimants' employment and whānau commitments.

8. The claimants are participating in the Taihape: Rangitikei ki Rangipo district inquiry to acknowledge the link of their tupuna to this district, and to particular lands and resources within this district, in particular their links through tupuna: Hinemanu, Punakiao and Renata Kawepo.

9. The Waitangi Tribunal's inquiry for this district has provided an opportunity to reveal the grievances suffered by generations of descendants of Ngati Hinemanu and Ngai Te Upokoiri, Nga Hapu o Heretaunga ki Ahuriri. The claimants are optimistic that the korero, evidence and submissions shared in this inquiry will benefit their iwi and hapū socio-economic future and serve as a valuable cultural resource that will be drawn on time and time again by future descendants of Ngati Hinemanu and Ngai Te Upokoiri.

The Claimants and the Claims

Wai 378

10. The Wai 378 claim was originally lodged in 1993 by the late Henry Tiopira Mathews. Mr Wero Karena was added as a named claimant to the Wai 378 claim by Memorandum-Directions of Presiding Officer Judge Harvey dated 17 March 2015[4]. This claim was made on behalf of the original owners of Owhaoko C3B and outlined the circumstances behind the alienation of this land from the original owners.

[4] Memorandum-Directions of the Presiding Officer Judge L J Harvey, dated 17 March 2015 (Wai 378, #1.1(c)).

11. Wai 378 was amended on 19 August 2016 to include specific blocks of land belonging to Ngati Hinemanu and Ngai Te Upokoiri in addition to Owhaoko C3B. These blocks are as follows:

    a) Owhaoko C3A

    b) Owhaoko C3B

    c) Owhaoko C6

    d) Owhaoko C7

    e) Owhaoko D2

    f) Te Koau

    g) Timahanga

12. The Claimants are Ngati Hinemanu and Ngai Te Upokoiri. The rohe of the Claimants is in the North Eastern corner of the Taihape Inquiry District. The particular land and resource interests that this claim covers include:

    a) Te Koau;

    b) Owhaoko;

    c) Timahanga;

    d) Awarua o Hinemanu; and,

    e) Ngaruroro river and her tributaries.

Wai 382

13. The Wai 382 claim relates particularly to the following lands:

    (a) Kaweka Forest Park;

(b) Gwavas Forest Park; and

(c) Ngaruroro River.

Wai 400

14. The Wai 400 claim was lodged on behalf of Nga Hapu o Heretaunga ki Ahuriri. The seven inter-related hapū that constitute Nga Hapu o Heretaunga ki Ahuriri include: Ngati Hinemanu, Ngai Te Upokoiri, Ngati Mahu, Ngati Honomokai, Ngati Mahuika, Ngati Ruapirau and Ngati Hineiao.

15. The blocks and areas associated with the Wai 2180 Inquiry within which all or some of the claimants have traditional interests include, but are not limited to, the following blocks mentioned in Renata Kawepo's will:

(a) Awarua o Hinemanu Block;

(b) Kaweka Block;

(c) Northern Kaweka district bounded by the Tutaekuri and Ngaruroro Rivers;

(d) Kohurau Block (which is the southeastern end of the Kaweka Forest Park);

(e) Kuripapango Block;

(f) Mangaohane Blocks;

(g) Morthern Ruahine district from the Pohatuhaha trig station north to the Ngaruroro River;

(h) Omahaki Block;

(i) Owhaoko C3A;

(j) Owhaoko C3B;

(k) Owhaoko C6;

(l) Owhaoko D2;

(m) Owhaoko D5 no 4;

(n) Owhaoko D7A;

(o) Owhaoko D7B;

(p) Te Koau Block; and,

(q) Timahanga 1 – 6 Blocks.

16. The Wai 400 claimants also have ancestral interests in the whenua contained within the Taihape: Rangitikei ki Rangipo Inquiry District. These ancestral interests are derived from the seven hapū listed in paragraph 7. Particularly, the key tupuna for those hapū is Renata Kawepo, who links those hapū with the land blocks in the Taihape Inquiry District.

17. One of the original markers of the extent of these interests is the confluence of the Mangamingi and Wai-o-Tupritia Rivers, forming the start of the Ngaruroro River, the site being named Toatoa-a-Tama-Kaitangi. The confluence is associated with Toatoa, a tupuna of the named late claimant, Ranui Toatoa and current claimants Greg and Rhonda Toatoa.

Evidence

18. The evidence filed on behalf of the claimants consists of the following briefs of evidence:

a) Brief of Evidence of Wero Karena, dated 1 April 2016, (Wai 2180 #B11);

b) Brief of Evidence of Wero Karena, dated March 2018, (Wai 2180 #J10); and,

c) Joint Brief of Evidence of Greg Toatoa and Rhonda Toatoa, dated 17 April 2018, (Wai 2180, #J9)

19. Counsel note that Mr Karena's evidence, especially, contains detailed discussion of the issues of landlocked land and access to various blocks, based on his personal experience and knowledge.

20. Counsel have also relied on the following submissions, technical evidence and generic closing submissions where appropriate, such as:

a) *Sub-district Block Study – Northern Aspect,* by Martin Fisher and Bruce Stirling, dated September 2012, (Wai 2180, #A6);

b) *Sub-district Block Study – Central Aspect,* by Evald Subasic and Bruce Stirling, dated October 2012 (Wai 2180, #A8)

c) *Taihape Rangitikei ki Rangipo Inquiry: Māori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley, dated 20 July 2015, (Wai 2180, #A37);

d) *Māori Landlocked Blocks*, by John Neal, Jonathan Gwyn and David Alexander, a report commissioned by Crown Forestry Rental Trust, dated August 2019, (Wai 2180, #N1); and,

e) Opening Generic Submissions re: Landlocked Land Issues, dated 6 November 2019, Bennion Law, (Wai 2180, #3.3.32).

21. The generic submissions on landlocked land are adopted by the Claimants , except insofar as there may not be alignment between the submissions, in which case these submissions are to be preferred.

Tribunal Statement of Issues in relation to Landlocked Land

22. The relevant issues identified by the Taihape: Rangitikei ki Rangipo Tribunal in its Statement of Issues in relation to landlocked lands are[5]:

a) What legislative frameworks resulted in the creation, or enablement, of landlocked titles and who administered those titles? To what extent was the Crown aware of such effects prior to, and following, the determination of title?

b) Do the Crown and its delegated local authorities have an obligation to Taihape Māori to provide legal access to landlocked lands in the Taihape inquiry district?

c) What attempts, if any, have been made by the Crown and local authorities to provide access to landlocked land? Have, such provisions been made equally for both Taihape Māori and non-Māori landlocked land? If not, why not?

d) To what extent did restricted access to landlocked land:

- Limit the potential economic development of Taihape Māori?
- Cause the loss of rental value?
- Impede the ability of Taihape Māori to access wāhi tapu sites?
- Cause further expense to Taihape Māori in order to retain those landlocked lands?

[5] Wai 2180, #1.4.3, Tribunal Statement of Issues, dated December 2016 at page 36.

Crown position and concessions on landlocked lands

23. At paragraph 56 of the Crown's memorandum of counsel dated 2 September 2016[6], the following limited concession in relation to landlocked lands was made:

> *The Crown notes that the fact that some lands retained were or are landlocked is a proper area for inquiry. Woodley states that 70 per cent of the land still in Māori ownership is landlocked.*[7] *There may be cases where particular groups have impeded access to sites of significance to those groups or insufficient access to undertake economic activity on their lands. Those examples must be analysed on a case-by-case basis to assess whether this resulted from any act or omission of the Crown.*

24. The Crown's position acknowledges that landlocked Māori land within the Taihape district is an issue that may have hindered access and economic development for the owners. However, the essence of the Crown position is that there must be a causative link between a Crown act or omission and a landlocked Māori block before any responsibility is accepted by the Crown for the extremely prevalent and widespread problem of Māori owned land within the Taihape district.

25. It is submitted that the claimants and all of those who provided evidence regarding landlocked land in support of Wai 378, Wai 382 and Wai 400 have done so openly, frankly and in good faith. They can point to clear examples of Crown actions and inactions which have created and then supported a status quo of landlocked Maori land within the Taihape district. These examples will be reiterated further in these closing submissions.

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[6] Wai 2180, #1.3.2, Crown Memorandum Contributing to the Preparation of a Draft Statement of Issues, dated 2 September 2016.

[7] Wai 2180, #A37 at 524.

Te Tiriti o Waitangi

26. It is submitted that the Crown has failed to uphold its Tiriti o Waitangi obligations and duties in relation to landlocked land within the Taihape inquiry district.

27. Counsel submit that the Crown by te Tiriti of Waitangi:

    (a) Confirmed and guaranteed to Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri, tino rangatiratanga including the full, exclusive and undisturbed possession of their lands, forest, estates, fisheries, other properties, rivers, waterways and taonga;

    (b) Promised to protect the rights of Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri guaranteed by Te Tiriti o Waitangi and perform their obligations arising out of Te Tiriti o Waitangi; and,

    (c) Extended to Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri all the rights and privileges of British subjects.

28. Counsel submit that the Crown has, and continues to have, duties to recognise and actively protect Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri rights and interests under Te Tiriti o Waitangi. Further the Crown has a duty to act in partnership with Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri and to enure it is acting in good faith in all its dealing with Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri.

29. As a consequence of Te Tiriti o Waitangi, the Crown was and is required to:

    (a) Ensure Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri retain their lands, estates, forests, fisheries, other properties and taonga for as long as they so wish;

(b) Recognise and protect Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri tino rangatiratanga;

(c) Ensure Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri exercise tino rangatiratanga, including the right to possess, manage and control all their property and resources in accordance with Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri lore, cultural preferences and customs; and,

(d) Ensure that the impact upon Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri from Crown actions and regulations was and remains consistent with Te Tiriti o Waitangi and its principles and actively protect tangata whenua, and in particular, Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri, rangatiratanga, customs, law and properties.

30. In relation to landlocked Māori land within the Taihape inquiry district, counsel submit the Crown has failed the claimants in its Te Tiriti duties. It is submitted that the evidence supplied by the claimants in relation to landlocked Māori land in support of Wai 378, Wai 382 and Wai 400 demonstrates the Crown's failings in breach of Te Tiriti and the prejudice suffered by the claimants because of those failings.

Partnership

31. The Hauraki Settlement Overlapping Claims Inquiry Report (2019) restated that crucial to the principle of partnership is mana:[8]

> *The Tribunal has noted that it is mana or authority that enables the exercise of tino rangatiratanga: Rangatiratanga signifies the*

[8] Wai 2840, Waitangi Tribunal, The Hauraki Settlement Overlapping Claims Inquiry Report, dated 2019, at page 11.

> *mana of Māori not only to possess what they own but to manage and control it in accordance with their preferences.*

32. The principle of partnership is well-established in Te Tiriti of Waitangi jurisprudence. Partnership imposes a duty on Tiriti parties to act towards each other reasonably, honourably and in good faith. Partnership stems from the principles of reciprocity and mutual benefit.[9] Integral to the Tribunal's understanding are: accountability and status of the Tiriti partners, the Crown's fiduciary duty, the need for compromise and a balancing of interests, and the duty to make informed decisions.[10]

33. It is submitted that Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri had a reasonable expectation arising from Te Tiriti o Waitangi to retain their authority, tino rangatiratanga, over their land, people, places and resources, and that the Crown would maintain its limited Kāwanatanga role, with each having distinct 'spheres' of authority while sharing authority over certain things.

34. Counsel submit the Crown has overstepped its partnership role in breach of Te Tiriti o Waitangi in respect of its relationship with Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri, such that owners of Maori landlocked blocks must seek permission from NZ Defence Force, DOC and private owners to access their whenua.

Active Protection

35. The Maniapoto Mandate Inquiry Report (2019) confirmed that tino rangatiratanga is extrinsically connected with Article 2 of Te Tiriti of Waitangi and principle of active protection, stating:[11]

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[9] He tirohanga o kawa kit e Tiriti o Waitangi: A guide to the principles of the Treaty of Waitangi as expressed by the Court and Waitangi Tribunal, Ministry of Māori Development, Wellington: Te Puni Kokiri, 2001, at 77.

[10] He tirohanga o kawa kit e Tiriti o Waitangi: A guide to the principles of the Treaty of Waitangi as expressed by the Court and Waitangi Tribunal, Ministry of Māori Development, Wellington: Te Puni Kokiri, 2001, at 80.

[11] Wai 2858 Waitangi Tribunal, The Maniapoto Mandate Inquiry Report, 2019, at 14.

> *Tino Rangatiratanga has been defined as 'full authority' and grants the mana 'not only to possess what one owns but, and we emphasise this, to manage and control it in accordance with the preferences of the owner.'*

36. The Crown has a duty of active protection that is central to recognising and protecting the rights guaranteed to tangata whenua by Article Two of Te Tiriti o Waitangi.[12] The Waitangi Tribunal and the Courts of New Zealand have consistently reaffirmed this principle.

37. The 1987 Court of Appeal decision *New Zealand Māori Council v Attorney-General* adopted prior Tribunal findings that the duty of active protection imposes a positive obligation to protect Māori interests.[13]

38. Specifically, the Crown's obligations of active protection of Māori include protecting their land and property interests, as well as the resources both natural and economic.

39. It is submitted that the Crown's active protection must be to the fullest extent reasonably practicable. The Crown has not attempted to do this in respect of the claimant's landlocked land.

Equal Treatment/Equity

40. Recent Tribunal reports have recognised the principle of equal treatment, whereby Māori and non-Māori are to be treated equally and fairly.[14]

41. The Maniapoto Mandate Inquiry Report (2019) stated:[15]

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[12] He tirohanga o kawa kit e Tiriti o Waitangi: A guide to the principles of the Treaty of Waitangi as expressed by the Court and Waitangi Tribunal, Ministry of Māori Development, Wellington: Te Puni Kokiri, 2001, at 93.

[13] New Zealand Maori Council v Attorney-General [1987] 1 NZLR 641 (CA) at 664, Cooke P cites the Waitangi Tribunal Reports: Te Atiawa, Manukau and Te Reo Māori Reports.

[14] Waitangi Tribunal, (2004), Crown's Foreshore and Seabed Policy, at 133 – 134.

[15] Wai 2858 Waitangi Tribunal, The Maniapoto Mandate Inquiry Report, 2019, at 18.

> *Similar to the Crown's duty to foster whanaungatanga among hapū and iwi in treating groups fairly and equally, the Crown must do all that it can to avoid creating or exacerbating divisions and damaging relationships.*

42. In one respect, the principle of equal treatment means that the Crown cannot favour one group of Māori at the expense of another.[16]

43. In another respect, this principle relates to the equitable guarantee that Māori are to have "the rights and privileges" of British subjects under Article 3.

44. Article 3 should also be interpreted not as equality of access, but rather as equality of outcomes. Therefore if Māori are starting from a disadvantaged point or are impeded by barriers not experienced by non-Māori, then the Crown is obliged to provide greater assistance to ensure, or at least attempt to ensure, equality of outcomes.

45. In relation to landlocked land, Article 3 confers a duty on the Crown to go above and beyond in solving the problem of inaccessibility to landlocked land. Māori owners have been impeded by barriers put in place by the Crown to access their land, and flowing from this inaccessibility, Māori owners have not been able to use their land or develop its economic capacity. In all respects Māori owners of landlocked land are starting at a point of disadvantage and impediment. This prejudice is not experienced by non-Māori private owners such as Big Hill Station, Ngamatea Station, Timahanga Station, Mangaohane Station and also not experienced by the Crown agencies (NZ Defence Force or DOC).

Right to Development

46. The *He Maunga Rongo* Tribunal found that Māori have a right to develop as a people, and that right extends to cultural, social, economic and

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[16] Waitangi Tribunal Reports: Ngati Awa Settlement Cross-Claims (2002) at 87-88; The Te Arawa Mandate: Te Wahanga Tuarua (2004), pp. 73-5. See also Te Tau Ihu o te Waka a Maui (2007) at 5; Te Tau Ihu o te Waka a Maui (2008), at 5.

political development.[17] Prior to this, the Tribunal acknowledged that Māori had a right to participate in the developing colonial society and economy.[18]

47. It is therefore submitted that the claimants had, and continue to have, a right to development culturally, socially, economically and politically. Specifically, the claimants have a right to develop their whenua according to their aspirations, despite the landlocked barriers which impede this development. Furthermore, the associated principle of options is also relevant to the right tangata whenua have to develop as they wish in all aspects of their life, in this case the use and enjoyment of their lands and resources.

Options

48. The 1988 *Muriwhenua Fishing Report* first described the principle of options as being the right of Māori to choose a social and cultural path. Māori must be free to choose between tikanga Māori and other cultural options. Any act of the Crown that limits opportunities for Māori to 'walk in two worlds', or their freedom of options in respect of their social, cultural and economic pathway is a breach of the principle of options.[19]

49. Subsequent Tribunals have reiterated this principle of options in reports relating to forestry[20], health services[21], the foreshore and seabed[22], and district inquiries. The principle of options emerges from Article Two which inter alia supposes protection of tribal self-management in accordance with tikanga and from Article Three which confers upon Māori the rights and privileges of British subjects.[23]

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[17] Waitangi Tribunal Report, *He Maunga Rongo,* 2008, at 914.

[18] Waitangi Tribunal Report, *Mohaka ki Ahuriri,* 2004, at 26.

[19] Waitangi Tribunal Report, *Muriwhenua Fishing Claim Report*, 1988, at 195.

[20] Waitangi Tribunal Report, *Tarawera Forest Report*, 2003, at 29.

[21] Waitangi Tribunal Report, *Napier Hospital and Health Service Report*, 2001, at xxvii.

[22] Waitangi Tribunal Report, *Crown's Foreshore and Seabed Policy Report*, 2004, at 133-134.

[23] Waitangi Tribunal Report, *The Ngai Tahu Sea Fisheries Report*, 1992, at 274.

50. It is therefore submitted that Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri had a reasonable expectation that being equal partners translates into an opportunity of participation in the Pakeha economy, the Pakeha way of life and the settler government to the extent that Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri wished to do so. Equally, the same expectation translates into tangata whenua having the option to access and utilise their land and to continue to live and operate autonomously, without interference or impediment by the settler government.

51. Landlocked land in reality means Māori owners have no options, unless they have a helicopter.

Mutual Benefit

52. The *Muriwhenua Fisheries Report* noted that the principle of mutual benefit arises from both Tiriti partners' expectations that benefits would result from signing Te Tiriti o Waitangi. In particular, the Tribunal found that, neither party can demand benefits without also adhering to the objectives of common benefit as it "ought not be forgotten that there were pledges on both sides."[24]

53. It is submitted that Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri reasonably expected to receive benefit from being a partner to Te Tiriti. Māori did not expect from signing Te Tiriti o Waitangi that their whenua would be sealed off from them as landlocked. The claimants would especially not expect this when their Tiriti partner does have access to their lands.

Redress

54. Arising from its duty to act reasonably and in good faith as a Tiriti partner, the Crown has an obligation to remedy past breaches of Te Tiriti o

[24] Waitangi Tribunal Report, *Muriwhenua Fishing Report,* 1988, at 189.

Waitangi.[25] It is our submission that the claimants have suffered prejudice due to Crown breaches of Te Tiriti o Waitangi and are therefore entitled to seek redress for those prejudices suffered.

55. Redress for grievances suffered is necessary to restore the mana and status of Māori. The different forms of loss suffered by Māori groups also must be taken into account and different forms of redress must therefore be considered and offered by the Crown.[26] There is also an expectation that redress includes the Crown honouring the principles of Te Tiriti o Waitangi into the future so as to not continue breaching Te Tiriti o Waitangi as similar or new situations arise. [27]

56. The Manukau Tribunal put it simply: "*Past wrongs can be put right, in a practical way, and it is not too late to begin again."*[28]

57. It is submitted that the principle of redress in relation to landlocked land confers a positive obligation on the Crown to provide and fund the owners desired access to landlocked land, be it a new route requiring structures or the construction of unformed legal roads.

Landlocked Lands – lack of reasonable access to Claimants' lands causes economic stagnation

Claimant position

58. Counsel submit that the Crown's actions and omissions to act in relation to landlocked Māori land within the Taihape district has resulted in the following breach of Te Tiriti o Waitangi:

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[25] He tirohanga o kawa kit e Tiriti o Waitangi: A uide to the principles of the Treaty of Waitangi as expressed by the Court and Waitangi Tribunal, Ministry of Māori Development, Wellington: Te Puni Kokiri, 2001, at 103.

[26] He tirohanga o kawa kit e Tiriti o Waitangi: A guide to the principles of the Treaty of Waitangi as expressed by the Court and Waitangi Tribunal, Ministry of Māori Development, Wellington: Te Puni Kokiri, 2001, at 103.

[27] He tirohanga o kawa kit e Tiriti o Waitangi: A guide to the principles of the Treaty of Waitangi as expressed by the Court and Waitangi Tribunal, Ministry of Māori Development, Wellington: Te Puni Kokiri, 2001, at 99.

[28] Report of the Waitangi Tribunal on the Manukau Claim (Wai 8), July 1985, at 99.

(a) In breach of its duty under Article III, to provide the Claimants with the same rights and privileges as British subjects, and in breach of its duty to help maintain the Claimants' connection with their lands, the Crown prioritized building roads that provided access to Pakeha or Crown-owned land, ahead of means to access Māori-owned land causing economic inhibition.

(b) In breach of its duty to actively protect the Claimants' interests, such as uninterrupted possession of whenua as guaranteed under Article II of Te Tiriti of Waitangi, and in breach of its duty to help the claimants live according to their cultural preferences, the Crown facilitated the creation of landlocked blocks via Native Land Court legislation and its processes.

59. The claimants support the Wai 2180 Opening Generic Submissions regarding Landlocked Land issues[29], where it was stated:

> *Apart from the requirement to provide a remedy once landlocked status arises that is not the fault of the Māori owners, the Treaty principle of active protection suggests that the Crown ought to, as soon as it becomes aware of the issue, <u>proactively</u> investigate the extent of the problem, and provide necessary resources to remedy it.*
>
> *The Crown contribution should cover not only legal costs and road formation costs but also, possibly, some of the lost opportunity costs because of delay in the development of the land.*

60. Furthermore, the claimants support the statement made by the technical experts John Neal, Jonathan Gwyn and David Alexander in their report

[29] Wai 2180, Opening Generic Submissions re Landlocked Land Issues, dated 6 November 2019, at paragraph 23 and 24.

Māori Landlocked Blocks: Wai 2180 Taihape Inquiry District, when they said:[30]

> *It is not fair that the present generation of Māori should be required to pay to obtain access to their lands when the Crown's form of legally recognised land title and process for partitioning had historically created the problem.*

Crown position

61. The Crown by Te Puni Kokiri has acknowledged that:[31]

> *Landlocked Māori land is a long-standing issue that is consistently raised by Māori landowners as severely limiting their options to access and use their land.*

62. Similarly, the Crown by the Department of Conversation has stated:[32]

> *DOC recognises the significance of the issue of landlocked land to Taihape Māori and the desire for access to those lands for both cultural and economic reasons.*

63. Te Puni Kokiri records that the principal barriers that impede access for Māori landowners to their land-locked blocks are:[33]

    (a) *The substantial costs (legal, survey, compensating neighbours, fencing, forming access), which can outweigh the expected benefits of achieving access.*

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[30] Wai 2180, #N1, Wai 2180 Taihape Inquiry District: Māori Landlocked Blocks, John Neal, Jonathan Gwyn, David Alexander, dated August 2019, at page 5.

[31] Wai 2180, #M28, Brief of Evidence Michelle Patehepa Parewhero Hippolite, Te Puni Kokiri, 18 February 2019, at 1.

[32] Wai 2180, #M7, Brief of Evidence William Eccles Fleury, at 15.

[33] Wai 2180, #M28, Brief of Evidence Michelle Patehepa Parewhero Hippolite, Te Puni Kokiri, 18 February 2019, at 5.

(b) *Difficulties in accessing capital for attaining access (legal, land acquisition, fencing and forming access).*

(c) *A lack of capacity and expertise to navigate the steps, including specialist advice on available options.*

(d) *Difficulties gaining agreements with surrounding landowners.*

(e) *Neighbouring landowners may have economic or other incentives to continue restricting access to the landlocked Māori land.*

64. The claimants also wish to note that the Crown via DOC has acknowledged in relation to Owhaoko land exchanges:[34]

> *The historic actions in relation to land acquisition or exchanges by DOC in the inquiry district show that there was little or no consultation with tangata whenua at the relevant times.*

Case Study - Owhaoko

65. Owhaoko is a large area of land in the north of the Taihape inquiry district. The claimants are owners and have interests in the following Owhaoko blocks:

(a) Owhaoko C3A

(b) Owhaoko C3B

(c) Owhaoko C6

(d) Owhaoko C7

(e) Owhaoko D2

(f) Owhaoko D5 no 4

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[34] Wai 2180, #M7, Brief of Evidence William Eccles Fleury, at paragraph 81.

(g) Owhaoko D7A

(h) Owhaoko D7B

66. The Owhaoko lands are challenging high-country terrain, unsuitable for settlement due to the wintry altitude and isolated distance from the Taihape-Napier road. Owhaoko has also been described as having poor farming potential, only fit for grazing merino.

67. Mr Wero Karena's evidence describes the history of how the Owhaoko blocks became beset with difficulties created through the Crown partitioning and segregating the Owahoko lands into smaller parcels.[35]

68. Similarly, Mr Greg Toatoa in his joint brief of evidence with Ms Rhonda Toatoa traces the history of alienation of the Owhaoko lands via the Native Land Court process and his personal experience of disassociation with his traditional lands:[36]

> *During my time as a trustee for both those areas of lands [Owhaoko and Te Koau], I was still finding my way and learning about their significance, but I soon realised the full impact that the issues surrounding these lands had had on our hapū. These issues were mainly how badly they were landlocked by surrounding landowners, and this had a major impact on us and how we can get onto our lands.*

69. Report authors, Neal, Gwyn and Alexander[37] note that the greatest concentration of landlocked blocks in the Taihape district is in the northern part of the inquiry district, in the Owhaoko and Orumatua Kaimanawa lands.

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[35] Wai 2180, #J10, Brief of Evidence of Wero Karena, dated 19 March 2018, at paragraphs 38 to 59.

[36] Wai 2180, #J9, Amended Joint Brief of Evidence of Greg Toatoa and Rhonda Toatoa, dated 17 April 2018.

[37] Wai 2180, #N1, Wai 2180 Taihape Inquiry District: Māori Landlocked Blocks, John Neal, Jonathan Gwyn, David Alexander, dated August 2019, at page 15.

70. Suzanne Woodley notes in relation to access from the Napier-Taihape road that Owhaoko D5 section 4, Owhaoko C3, Owhaoko C5 and Owhaoko C7 are directly accessible from the Napier-Taihape road and that:[38]

> *The roads that do exist within the block (to Ngamatea Station and to Timahanga Station) are not public roads so permission is required from the owners of the blocks which the roads traverse to use them.*

71. Suzanne Woodley in relation to Owhaoko D5 section 2, records the access available:[39]

> *Whilst the greater portion of the country is open tussock, it lies at an altitude of up to 3,200', is surrounded by Māori lands, has no road access and is 80 to 100 chains north of the Taihape-Napier road. Ngamatea Station which lies to the north-east, is the nearest habitation.*
>
> *All the surrounding areas, including Ngamatea Station, have been the subject of roadside inspections and have been turned down and it is not likely that the Māori Affairs Department would consider development in this locality.*

72. The Owhaoko blocks with the best access are those that are in Crown ownership or private ownership. There is a formed private road from the Taihape-Napier Road to access the privately owned Timahanga Station

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[38] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 397.

[39] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 393 - Field Officer, Palmerston North, Department of Lands and Survey to Commissioner of Crown Lands, Wellington, 12 August 1952, AAMA W3166 619 Box 5 4/966 Wellington: Property – Owhaoko D5, No 2. Block IV and VII, Taumata SD, 1952, Archives New Zealand, Wellington. SW Document Bank, volume 8, p.53.

on Owhaoko C3A and C3B. The road runs close to the Crown-owned Owhaoko C3 (part).[40]

73. Te Puni Kokiri Taihape Landlocked Land pilot study found in relation to Owhaoko, that:[41]

> *Landlocked subdivisions of the Owhaoko block alone total 39,582 hectares – 78 per cent of the 51,017 hectares assessed as likely to be landlocked within the inquiry district.*

74. The landlocked nature of the Owhaoko land means that for all intents and purposes the land is unable to be utilised or developed by Ngati Hinemanu, Ngai Te Upokoiri and Nga Hapu o Heretaunga ki Ahuriri

75. While there is vehicular access to the Māori-owned Owhaoko C7, it is from where the Taihape-Napier road crosses the south eastern corner of the block near Kuripapango.[42] This road is very steep.[43] The only access to the more northern blocks of Owhaoko C6 and Owhaoko D2 are forestry tracks through the Kaweka Forest Park. There is no access through other southern blocks, which are either privately owned or owned by other iwi.

76. The Claimants note that the Department of Conservation has recorded their access to DOC lands is *"often via helicopter or through agreements with private parties (which have not been easily achieved and have limited flexibility)."*[44]

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[40] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 397.

[41] Wai 2180, #M28, Brief of Evidence Michelle Patehepa Parewhero Hippolite, Te Puni Kokiri, 18 February 2019, at 15.

[42] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 397.

[43] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 397.

[44] Wai 2180, #M7, Brief of Evidence William Eccles Fleury, at paragraph 80.3.

77. This lack of access for Māori owners to the Owhaoko block stems from the Native Land Court not ordering roadlines through Owhaoko at the time of partition into Owhaoko A, B, C and D in 1888 and the partition of Owhaoko C into blocks 1-7 and a part block in 1894.[45] This could have been done under Native Land legislation at the time.[46] Sections 91 and 92 of the Native Land Court 1886 provided that a right to a private road could be ordered when land was being investigated or partitioned, or within 5 years of the partition order being made.[47] The Native Land Court Act provided similar provisions.[48] However, neither Act specified that the provision of access was mandatory.

78. The final partition of Owhaoko occurred in 1935 in respect of C3 which was divided into two portions. Over 47 years the huge Owhaoko lands were crippled by the Crown's partitioning, dividing and sub-dividing into inaccessible an uneconomical portions of land. Throughout this 47 year period there were countless opportunities for the Crown to lay out surveyed roads, however as the evidence plainly illustrates this practical and ordinary step when partitioning never crossed the Crown's mind when it came to Māori owned land:[49]

> *The plan of the Owhaoko block signed by the Authorised Surveyor for the Department of Lands and Survey in 1895 shows only the Napier-Taihape 'coach road' traversing the southern end of the block. No roads (or tracks) are shown within the block. Similarly, when Owhaoko D5 was partitioned into four subdivisions in June 1899, the boundaries were given but no*

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[45] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 397.

[46] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 422 - 423.

[47] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 398.

[48] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 398.

[49] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 398.

> *mention was made at the hearing regarding roads or access. Likewise, there were no road lines ordered when Owhaoko D6 was divided into three portions on the same day. The unfortunate reality is that no roadways were ever ordered at the time the blocks were partitioned.*

79. As noted above at paragraphs 8 and 12 the claimants have ownership interests in many of the partitioned Owhaoko blocks such as Owahoko D2 and Owhaoko D5 no 4. Both of these blocks are specific examples given by Suzanne Woodley which illustrate the Crown's failure to take the opportunity to order roadways at the time of partitioning to enable access to Owhaoko D2 (located at the far east of the block to the north of Owhaoko C7 and C6) and to in the case of Owhaoko D5 to review why the roadline ordered was never constructed:[50]

> *…an application was made on 29 September 1899 by owner Waikari Karaitiana for access from the main road to Owhaoko D2…there is no reference to an order being made for Owhaoko D2. No order has been located on the block order file or reference made to it in subsequent minute books.*
>
> *In May 1902, an application for access by road from Owhaoko D5 section 4 to section 1 was heard by the Native Land Court…There were no objections and the order was made as requested. The applicants were to 'bear [the] cost of any survey necessary…*

80. Additionally, the Crown failed to act on or ignored the advice of Crown officials in regard to leasing and access of the Owhaoko lands:

> *It was noted by the Valuer General in 1905, however, in one of the first references to access, that the lease of Owhaoko D5*

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[50] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 398.

> *sections 2,3,4 would 'cut off the balance of Owhaoko for road access' and that this would 'seriously affect its value.'*

81. The inspector for the Department of Agriculture in April 1907 was of the same mind as the Valuer General stating:[51]

> *…Owhaoko D5 section 1 was 'the key to the whole of Owhaoko'. He said that it was 'in the interests of the several Native Owners [that] there should be not partition of the block, but the whole should be leased so that no part should be deprived of access or left without a tenant through sub-division.'*
>
> *The response of the Department of Lands to the report made to the Commissioner of Crown Lands did not include any mention of access so the advice was essentially ignored.*

82. In essence the failure of the Native Land Court legislation to mandatorily specify the provision of access when partitioning blocks coupled with the tenuous access permissions given or taken away on the whim of owners of Ngamatea Station has meant that the northern Owhaoko blocks are severely limited in their access and ability to be utilised for any purpose.

83. The claimants and other Māori owners of the Owhaoko lands find themselves time and time again at an impasse with the Ngamatea Station owners, they are demoralised and frustrated.[52]

Case Study - Te Koau A

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[51] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 400 to 401.

[52] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 400 to 418.

84. Te Koau has no legal access.[53] Te Koau A is located south of the Taihape-Napier Road. Private land, DOC lands and other Māori land enclose Te Koau.

85. As with the Owhaoko lands, the limitations of access for Te Koau stem from the fact that reasonable access was not ordered by the Native Land Court either at the initial investigation into title in 1900, nor the appeal hearing in 1906, nor even when Te Koau was partitioned into Te Koau A and Te Koau B in 1921.[54]

86. Suzanne Woodley records that even after the partition hearing, when the lack of access to Te Koau A was obvious and known by relevant government officials no action was taken to remedy the situation:[55]

> *Following the partition hearing, however, the Department of Lands and Survey, who had been tasked with surveying the partition, pointed out to the Registrar of the Native Land Court that there was 'no access provided for in the court descriptions' and that 'possibly this has been an oversight'. The chief surveyor asked the registrar to draw the Judge's attention to the matter 'so that if access is necessary, it may be provided while the Surveyor is on the ground'. A handwritten response on the corner of this letter to the registrar states: 'There does not appear to be any road access to the block – No mention was made of such at the hearing when Mr Hallett represented the non-sellers and Mr*

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[53] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 437.

[54] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 4339 – 440.

[55] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 441.

> *Stanton represented the purchaser from the sellers."[56] On this basis the registrar replied to the chief surveyor that:*
>
> *…there does not appear to be any road access to the block itself, and as no mention of roads was made at the time of the hearing of the application for partition, the question was not considered by the Court.[57]*

87. Unlike Owhaoko, section 69 of the Native Land Act 1894 could not have been used in this case to provide for a private road to Te Koau A. It applied only to blocks of Māori land being partitioned that were situated adjacent to existing public roads.[58] However, the Native Land Amendment Act 1913 could have been used. It allowed for the laying off of roads over adjoining land at any time after the block had been investigated or partitioned.[59] In the case of adjoining European land (section 52) the consent of the owner of the land was required. The Court could also order compensation and the adjoining owner could determine whether the road became a public road or not. An exchange of Māori land for European land could also have been ordered to affect access.[60] Reasonable access was not a mandatory consideration under this legislation, and there is no record of the court seriously giving thought to the idea of providing access to whenua for Māori land owners.

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[56] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 441 – Chief Surveyor, Department of Lands and Survey District Office, Napier to Registrar, Native Land Court, Wellington, 24 June 1921, Handwritten note on aforementioned letter to registrar, 29 June 1921,Ikaroa I/316 Te Koau B alientation file, 1919 – 1929, Takitimu Māori Land Court, Hastings. SW Document Bank, volume 3, p.50.

[57] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 441 – Registrar, Native Land Court, Wellington to Chief Surveyor, Napier, 30 June 1921, Ikaroa I/316 Te Koau B alienation file, 1919 -19-29, Takitimu Māori Land Court, Hastings. SW Document Bank, volume 3, p. 51.

[58] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 443.

[59] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 443.

[60] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 443.

88. The Native Land Amendment and Native Land Claims Adjustment Act 1922 added a provision to the 1913 Act whereby road lines could be laid off over adjoining European land to give access to Māori land without the permission of the owner.[61] Te Koau A was precluded from using this section by the provision that European Land had to have still been Māori land on 15 December 1913.[62]

89. Thus, at no time was the Court seriously required or inclined to consider the issue of reasonable access for the owners of Te Koau A or Owhaoko. The Crown failed to provide appropriate statutory protections or remedies, while the Court failed to take due care in its work to protect the Maori landowners, brushing off their rights with the comment that it was not raised actually in court hearing itself.

90. Mr Karena's evidence has detailed the original problems for this block and access to it deriving from the complicated original nineteenth-century dealings and transactions relating to the problematic educational reserve. This has left the Claimants in the position of having to obtain the permission of the adjoining landowners to access their land – and in the case of Te Koau A this is a position they are still in to this day – 120 years later.[63]

91. Suzanne Woodley notes that the most direct-overland access route to Te Koau A is via the Timahanga Track which is administered by DOC. The track is a metalled formed road suitable for vehicles and despite traversing through the privately owned Timahanga Station (Mr Roberts) is in Crown ownership. There is no formal arrangement with DOC or Mr Roberts for Māori landowners to use the Timahanga Track to access their land locked land. The Māori owners must rely on the whim and goodwill of the station owner for intermittent access to their whenua.

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[61] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 443.

[62] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 443.

[63] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 443.

92. In the early 1970s, Mr Karena attempted to establish a deer farm on Te Koau A. Mr Karena sought access over Timahanga Station lands, owned by Mr Roberts. The Māori Land Court rejected Mr Karena's application for failure to complete it correctly.

93. From 1 January 1978, the trustees of the Te Koau A trust leased Te Koau A to Mr Karena for deer farming. However Mr Karena had to surrender the lease on 5 December 1991 when he was no longer permitted by Mr Roberts to access Te Koau through Timahanga lands.[64]

94. The isolated nature and poor quality of land coupled with intermittent access to the block over the last 120 years has meant the claimants and their tupuna have struggled to access, enjoy or generate any income from Te Koau A.

95. In 2006 the land was placed under a Whenua Rahui Kawenata Trust which enabled the owners to get some financial assistance to meet the costs of maintaining Te Koau A.[65] This still does not, though, assist with those issues of access, use and deriving benefit from the block.

Case Study - Awarua o Hinemanu

96. The Awarua o Hinemanu block lies at the summit of the Ruahine ranges between Te Koau and the Awarua block.

97. The tupuna of the Toatoa whānau, Te Otene Toatoa, was an owner listed in the block following the Native Land Court process. There were issues with the Crown purchasing of this block which resulted in years of

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[64] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 446.

[65] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 449.

disassociation of the customary owners, from this whenua. Suzanne Woodley records:[66]

> *Awarua o Hinemanu was mistakenly assumed to be Crown land for almost 100 years. When the mistake was realised title to the land was investigated and awarded to Māori in 1992.*

98. The 6,330-acre block is now in Māori ownership and administered by Awarua o Aorangi Trust. This block is landlocked. There are 890 owners.[67] Although the land was returned to Māori, it was returned without any access. The onus has been on the trustees to negotiate access (which has proven to be not forthcoming) despite the Crown negotiating its own access through private land and Crown land adjacent to Awarua o Hinemanu and not ensuring access for the Māori owners of the block.[68]

99. There is a formed road (No Mans Road) that leads to Awarua o Hinemanu. It traverses through Mr Glazebrook's farm, Big Hill Station, and then continues through Crown (DOC) lands to the block.

100. Mr Glazebrook has not given permission for the Trust to use No Mans Road and although DOC says it would support the use by owners to access the road where it traverses through DOC lands it will not assist in the provision of access through Mr Glazebrook's farm.

101. Curiously, DOC has negotiated an access agreement with Mr Glazebrook which allows DOC to use the formed road as and when they need to in order to access the DOC lands.

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[66] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 435.

[67] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 426.

[68] Wai 2180 #A37, *Taihape Rangitikiei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870 – 2015*, by Suzanne Woodley 2015 at page 435.

102. There is no agreement to grant access by Māori owners to their blocks, despite the road leading there. Access is prevented by a locked gate.

103. DOC's access agreement with Mr Glazebrook does however allow one hunting party and one tramping party to traverse Mr Glazebrook's farm via No Mans road every weekend.

104. The claimants wish to record fully the words of Suzanne Woodley which accurately portray the appalling unreasonableness of the situation for Māori landowners:

> *Despite an application for reasonable access being in the Māori Land Court process for ten years the owners are still denied access to their land and those denying the access are entitled to apply for costs incurred opposing the application for access. This has all occurred under current legislation designed in 2003 to provide legal and reasonable access to Māori landlocked blocks.*
>
> *The reality is that there is a legal road, albeit unformed, which could provide access to the land. If the rights of the landowner who owns the access road takes precedent and access is denied because of that persons say so then there is an alternative. This would then make the return of the block a proper and fair resolution and not one with a major flaw.*

105. The Claimants state that for all intents and purposes, Awarua o Hinemanu may as well be owned by Mr Glazebrook or DOC because of the Awarua o Aorangi Trust's powerlessness to enforce their rights as owners. Counsel again submit that this has happened under current legislation, for which the Crown is responsible, and that a Crown agency, DOC is at least complicit in perpetuating this hardship, if not originally causing it, to the present day. It is yet again not a case of imposing current attitudes on the past.

106. Counsel are instructed that in the case of both the paper roads on this block and on Te Koau A, the Minister at both relevant times proceeded with private dealings with the Pakeha owners, Messrs Glazebrook and

Roberts, ignoring the existence of the paper roads and the rights of the Maori owners whose access to their lands was thereby rendered effectively meaningless by the Crown. These processes were spelled out in the evidence to this Tribunal of Mr Karena and of others such as Mr Hape Lomax.

Prejudice

107. As a result of ongoing prejudicial actions by the Crown, the claimants and their hapū have continuously been disconnected from their whenua, consequently stripped of their resources and ability to prosper economically having far reaching and negative impacts on all aspects of their lives. The claimants and their hapū have been set up to fail.

108. Counsel respectfully submit that the following prejudice has been caused by the actions and omissions to act of the Crown in relation to landlocked land within the Taihape Inquiry District and in breach of Te Tiriti o Waitangi:

a) The claimants have been and continue to be prevented from freely exercising their tino rangatiratanga, including possession, management and control of their lands in accordance with their lore, cultural preferences and customs. In particular, they were denied:

(i) The active protection to enable them to retain their lands for as long as they wished

(ii) The opportunity and assistance to develop their lands in a manner consistent with their cultural preferences

(iii) The opportunity and assistance to enable them to make the best use of their lands for their own economic benefit

b) The claimants have suffered and continue to suffer financially, spiritually and emotionally from the loss of their lands and the inaccessibility of the lands they retrain in Ngati Hinemanu and Ngai Te Upokoiri ownership.

c) The Claimants have been left with an insufficient endowment of lands and resources for their present and future needs

109. Ultimately the Crown failed to adhere to its side of the bargain in respect of Te Tiriti o Waitangi. The Crown has failed as a Tiriti o Waitangi partner, the Crown failed to actively protect the claimants interests and has failed to consider the interests and ownership rights of the claimants and their tupuna when it enacted legislation, policies and judicial frameworks which directly culminated in landlocked whenua.

Relief

110. The claimants hope that the Tribunal's process will assist their whānau and hapū to restore their social, cultural, resource and economic base so that they can prosper as people.

111. Specifically, the claimants seek the following relief in relation to their land-locked lands:

a) That the Tribunal inquire into the prejudice to the claimants arising from breaches of Te Tiriti o Waitangi by the Crown alleged in the Amended Statement of Claims for Wai 378, Wai 382 and Wai 400, and these closing submissions.

b) That the Tribunal make findings as to breach and prejudice, in the terms alleged and as the Tribunal further determines.

c) The restoration of the social, cultural, resource and economic base of the Claimants in a full and substantial manner to compensate for the years of alienation from the land, which has diverted the natural course of the Claimants' whānau and the opportunity for economic gain.

d) Compensation for the prejudice the Claimants have suffered as a result of the Crown's legislation, acts, omissions, policies and practices identified in their claims and these submissions.

e) Unrestricted legal access to the Owhaoko lands, Te Koau A and Awarua o Hinemanu for all owners and beneficiaries, to be provided at the cost of the Crown;

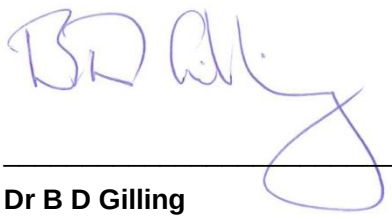
f) Financial assistance from the Crown so that the whenua above can finally be developed for the claimants and their hapū; and,

g) Return of all lands that were wrongfully taken from the claimants and their hapū.

112. The claimants would like the Crown to acknowledge them and their claims in their own right, and not to talk just to those larger groups who purport to talk on the claimants' behalf, but who have never been mandated by the claimants to do so.. We have our own mana and our own grievances that the Crown should not ignore.

113. The claimants seek a full apology from the Crown for the acts and omissions that were in breach of Te Tiriti o Waitangi.

Dated at Wellington this 10th day of February 2020



Dr B D Gilling
Counsel for the Claimants