IN THE WAITANGI TRIBUNAL **WAI 2180**
WAI 1619

IN THE MATTER of The Treaty of Waitangi Act 1975

AND Claims in the Taihape: Rangitīkei ki Rangipō District Inquiry and consolidated under Wai 2180

AND the Wai 1619 claim by John Reweti on behalf of himself and the hapū of Ngāti Parewahawaha

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CLOSING SUBMISISONS ON BEHALF OF WAI 1619 AND NGĀTI PAREWAHAWAHA

DATED THIS 21st DAY OF DECEMBER 2020

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. These closing submissions are filed on behalf of Wai 1619, being a claim by John Reweti on behalf of himself and the hapū of Ngāti Parewahawaha ("the Claimants").

NGĀTI PAREWAHAWAHA HAPŪ CLAIM (WAI 1619)

2. The original statement of claim was filed by the claimants in 2008,[1] with the intention to participate in the Tribunal's Rangitīkei/Manawatū districts investigations. The named claimant is John Reweti, who is of Ngāti Parewahawaha descent. Mr Reweti filed the claim on behalf of the hapū Ngāti Parewahawaha.

3. However, on or about 2010 (and after careful consideration) the Tribunal determined that the inquiry would be split into two districts; Porirua ki Manawatū and Taihape ki Rangipō.

4. The Wai 1619 claim was granted claimant status in both inquiry districts and have therefore sought to participate in this inquiry to the extent that there are overlaps of whakapapa and overlaps of customary interests. Those overlapping interests will therefore be the focus of these closing submissions.

NGĀTI PAREWAHAWAHA CUSTOMARY INTERESTS

5. Ngāti Parewahawaha is a hapū of Ngāti Raukawa of the Tainui waka.[2] Prominent tīpuna from which Ngāti Parewahawaha descend are: Hoturoa of Tainui; Turongo and Mahinarangi; and Raukawa.[3]

6. At 1840, Ngāti Parewahawaha held wide customary interests within the Porirua ki Manawatū Inquiry district including blocks now known as the Miria Te Karaka block, which is at Rangataua south, along the Rangitīkei River to Ōhinepuhiawe.[4]

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[1] Wai 2180, #1.1.34.
[2] Wai 2180, #C12(b) *Ngā Kōrero a Ngāti Parewahawaha Report* at [8] – [10].
[3] Wai 2180, #C12(b) *Ngā Kōrero a Ngāti Parewahawaha Report* at [1] – [8].
[4] Wai 2180, #1.1.34; Wai 2180, #1.2.6.

7. The claimants are aware that other hapū hold or assert customary interests in lands and interests that are also subject to this claim.

8. While the majority of Ngāti Parewahawaha interests lay in the Porirua ki Manawatū inquiry, particularly in relation to the Te Reureu Reserve and the Rangitīkei-Manawatū land block, the hapū still maintain some interests in the Taihape district as a result of their migration down the Rangitikei River during the well-known heke.[5]

9. Ngāti Parewahawaha responded to requests to travel south to the inquiry district and did so through a number of heke. The various heke related to the relationship between the people of Ngāti Raukawa and Te Rauparaha, together with his nephew lieutenant Te Rangihaeata and his sister Waitohi. The motivations for migrating south included to prevent the further sale of lands.[6]

10. The tīpuna of Ngāti Parewahawaha were part of the heke of hapū and iwi who migrated southwards from Maungatautari, in the Waikato-Tainui region, with 'Te Heke Mairaro' under Te Whatanui. Ngāti Parewahawaha established a number of settlements along the Rangitīkei River including at Poutū, Matahiwi and Ōhinepuhiawe.[7]

11. The hapū also has wider links to other hapū within the Ngāti Raukawa-ki-te-tonga confederate, whose region stretches from the Rangitīkei River, west of Manawatū, to Kūkūtauaki Stream, just north of Waikanae.[8]

12. The hapū and the claimants assert customary interests in this Inquiry in the Rangitīkei River and its tributaries (including the water and its tributaries), and lands along the river and within their rohe.[9]

13. Ngāti Parewahawaha maintained significant sites of occupation along the southern banks of the Rangitīkei River.[10] Ngāti

[5] Wai 2180, #C12(c).
[6] Wai 2180, #C12(b) *Ngā Kōrero a Ngāti Parewahawaha Report* at [8] – [9].
[7] Wai 2180, #C12(b) *Ngā Kōrero a Ngāti Parewahawaha Report* at [8] – [9].
[8] Wai 2180, #C12(a); Wai 2180, #C12(b).
[9] Wai 2180, #1.1.34; Wai 2180, #1.2.6.
[10] Wai 2180, #C12(b) *Ngā Kōrero a Ngāti Parewahawaha Report* at [36].

Parewahawaha like many other hapū settled with various groups along the river and as a result formed important alliances and whakapapa connections.

WAI 1619 CLAIM ISSUES

14. The Wai 1619 statement of claim outlines several issues and allegations against the Crown.[11] It is submitted that those issues remain extant in the Porirua ki Manawatū inquiry where the hapū maintains substantive interests and allege significant breaches of Te Tiriti by the Crown.

15. The issues for the Wai 1619 claim within the Taihape inquiry district centre primarily on; environmental degradation of the Rangitīkei River and its tributaries and the reduction of important food sources; the failure to recognise and respect the mauri of the Rangitīkei River; and the detrimental impact of the Crowns native land regime which created an environment where complex and overlapping interests in accordance with tikanga Māori could be disregarded and ignored.

PRINCIPLES OF THE TREATY

16. The claimants have alleged breaches of Te Tiriti by the Crown in its dealings with Ngāti Parewahawaha and rely on the principles of the Treaty of Waitangi (first articulated in the *Lands* case) in advancing their claim.

17. A key part of the Waitangi Tribunal's role is to determine whether the actions or inactions of the Crown are "inconsistent with the principles of the Treaty".[12] The principles bind the Crown to various duties to Māori by way of a fiduciary relationship through the promises made by both parties when they signed Te Tiriti.

18. The claimants assert that the Crown has failed Ngāti Parewahawaha on several fronts that caused the claimants, their whānau, and their tīpuna, substantive prejudice.

[11] Wai 2180, #1.1.34; Wai 2180, #1.2.6.
[12] Treaty of Waitangi Act 1975, s 6(1).

Partnership and Consultation

19. It was the understanding of Ngāti Parewahawaha that at the signing of Te Tiriti, that a Partnership was established between Māori and Pākehā, and that each partner would act reasonably and in the utmost good faith toward each other.[13]

20. The duty to consult with Māori arises out of the Te Tiriti partnership principle. The Tribunal from the Central North Island Inquiry stated that:[14]

> *… the Crown has a duty, emerging from the principle of partnership, to consult Maori on matters of importance to them and to obtain their full, free, prior, and informed consent to anything which alters their possession of those lands, resources, and taonga guaranteed to them in article 2.*

21. The claimants submit that the duty on the Crown to consult with Māori means meaningful and robust engagement and nothing less. Particularly around matters or issues created by the Crown that may prejudice Māori or impinge on their rights. The claimants say that Crown consultation should not be notional or illusory.

Duty of Active Protection

22. Justice Cooke in the Court of Appeal stated that the reciprocal relationship between Māori and the Crown required the following:[15]

> *"… the Treaty partners each to act towards the other reasonably and with the utmost good faith. The relationship between the Treaty partners creates duties analogous to fiduciary duties. The duty of the Crown is not merely passive but extends to active protection of the Maori people in the use of their lands and waters to the fullest extent practicable."*

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[13] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 663-664; *Report of the Waitangi Tribunal on the Orakei Claim*, Wellington: Brooker and Friend, 1987, at 147.
[14] *Central North Island Part V Report* at 1236.
[15] *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 664.

23. The Tribunal for the Rohe Pōtae Inquiry stated that: “the Crown’s duty is one of active protection, which imposes an obligation to protect Māori rights and interests to the fullest extent reasonably practicable”.[16]

24. Furthermore, active protection for Māori emerges out of the Crown’s partnership obligations with Māori.[17]

25. The claimants submit that the threshold for the Crown to meet this obligation is high and that it should remain so to ensure Māori rights and interests are actively protected.

26. The claimants submit that the Crown must exercise the upmost due diligence to ensure that the rights of Māori are protected.

Reciprocity

27. The Tribunal for the Ngāi Tahu Inquiry discussed the overarching ‘principle of exchange’ which it regarded as the fundamental compact embodied in the treaty.

28. The principle of reciprocity requires the Crown and Māori to engage in exchanges that are advantageous and beneficial to both parties to Te Tiriti.[18]

29. The principle of reciprocity is derived from Articles I and II of the Treaty and captures the essential bargain agreed to in the Treaty by Māori and the Crown as equal partners.

Duty to act reasonably and in good faith

30. Drawing on the Lands case in 1987, the Tribunal stated in its Orakei Report (1987) that: “The Treaty signifies a partnership between the Crown and Māori people and the compact rests on the premise that each partner will act reasonably and in utmost good faith towards the other”.[19]

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[16] *Te Mana Whatu Ahuru Part I Report* at 184.
[17] *Te Mana Whatu Ahuru Part I Report* at 183.
[18] Waitangi Tribunal *Ngai Tahu Land Report* (Wai 27, 1991) at [4.7.5].
[19] Report of the Waitangi Tribunal on The Orakei Claim at 205.

31. The principle to act reasonably and in good faith means the Crown has a Te Tiriti duty to deal in good faith with Māori at all times.[20]

CROWN BREACHES OF TE TIRITI O WAITANGI

Rangitīkei River

32. The claimants submit that through the Crown's actions, inactions, and policies, the Rangitīkei River ("the River") has deteriorated and degraded to such a degree that Ngāti Parewahawaha are no longer able to rely on it as a natural resource. The claimants say that the Crown has breached principles of protection, good faith, and failed to consult Māori on important matters in relation to the river.

33. Ngāti Parewahawaha established a number of settlements along the Rangitīkei River. Poutū was the principal settlement on the southern bank. Other settlements included Matahiwi upstream, which was associated with the chiefs Nēpia Taratoa and Weretā.[21]

34. Ngāti Parewahawaha has maintained interests in some of the main tributaries of the Rangitīkei River including the Moawhango River. Today you can find Ngāti Parewahawaha concentrated around Parewahawaha Marae.[22]

35. The evidence in this inquiry supports that Ngāti Parewahawaha maintained an enduring relationship with the Rangitīkei River. Under cross-examination at hearing week two, Dr Robert Joseph and Paul Meredith stated: [23]

> *"… yes, definitely Ngāti Waewae and Ngāti Parewahawaha were very much connected with the awa, a strong identity and a strong historical relationship with the awa."*

[20] Waitangi Tribunal *The Hauraki Report Volume 1* (Wai 686, 2006) at xxxiv.
[21] Wai 2180, #A44 at 36.
[22] Wai 2180, #A44 at 36.
[23] Wai 2180, #4.1.9 at 167.

36. Ngāti Parewahawaha gathered food such as inanga and tuna from the river, [24] as well as pātiki (flounders).[25] They also used the river for drinking water. The river and its tributaries were their "food basket".[26]

37. Ngāti Parewahawaha also remember there being an abundance of watercress supplied by the river and its tributaries.[27]

38. However, when the water quality began to degrade (through no fault of their own) the hapū was no longer able to rely on the river to sustain themselves.

Pollution of the Rangitīkei River

39. Large communities within the district relied on the river for their survival, however, a gradual decline in food sourced from the river became noticeable as the water quality progressively degraded.

40. The river's populace of fish species gradually depleted as the river itself became contaminated with dangerous toxins and poisons from the discharge of effluent and other chemicals that leeched into the water. Unfortunately, the river is now "too polluted"[28] to be used as a hapū resource and the water is unsafe to drink.

41. At hearing week 2, David Alexander summarised the level of pollution of the Rangitīkei River in his own words:[29]

> *"Right, thinking of it in terms of relative terms as compared to the upper and the lower catchments, the upper catchment is relatively unpolluted. It would probably still have pollution such as giardia, which would probably be found even as far upstream as the Kaimanawa Ranges. But there would be fewer contaminants that have been introduced by human influence. Coming down through the narrows, probably a similar flicker applies, coming out below the narrows and into that stretch between there and the junction with the Hautapu which includes the Moawhango coming into the river, still relatively unpolluted but slightly more pollution than further upstream.*

[24] Wai 2180, #A44 at 169, 173, and 179.
[25] Wai 2180, #A44 at 176.
[26] Wai 2180, #A44 at 169.
[27] Wai 2180, #A44 at 184.
[28] Wai 2180, #F7 BoE of Turoa Karatea at [19].
[29] Wai 2180, 4.1.9 at 303.

At the junction of the Hautapu and the Rangitīkei you get the input from Taihape Sewerage Treatment Plant. That has a consequence downstream into, lower into the reaches of the Rangitīkei below the Hautapu River and then at that point you're starting to pick up more contaminants from the agricultural development of the catchment. At the Pourewa, when you get down there, highly polluted river there, very badly affected by the agricultural development in that catchment because there is so little natural flow in terms of quantity and yet there is so much agricultural development, so you get a – there's no dilution effect, you get a high contamination and that again flows into the Rangitīkei at Rata and carrying on down from there you get again more intensive agricultural development on the flatter lands closer to the river banks and therefore you're starting to get supplemented by the point source pollution around Bulls area and that's where you start to get significant pollution in the river."

42. The facts demonstrate that the river is no longer as healthy as it used to be and there remains very few areas, if any, where the hapū are still able to safely gather kai for their whānau.

43. The claimants say that the pastoral industry and general economic development have adversely impacted the health of the Rangitīkei River. The farming industry itself has; "significantly contributed to polluting the waterways to differing degrees".[30] Various other farming practices often included the use of fertilisers which ran into the waterways.[31] The claimants say that the Crown has done nothing to alleviate or remedy the damage that has been done by the farming industry.

44. Furthermore, European settlement and the clearing of forests lead to suspended sediment being washed into the rivers altering river flow patterns. This resulted in the waterways deterioration in quality and quantity.[32]

[30] Wai 2180, #A44 at 212.
[31] Wai 2180, #A44 at 212.
[32] Wai 2180, #A44 at 212.

45. The introduction of fish species to the river negatively impacted on the indigenous fish species, further reducing Ngāti Parewahawaha food sources.[33]

46. One Ngāti Parewahawaha interviewee provided kōrero that discussed how they lost one of their mahinga kai streams completely due to pollution from the local timber mill through the process of tanalising, the interviewee stated:[34]

> *"We also used to have a little stream that ran from the river over here … That was our food basket … to go and haul for tuna … ducks … watercress … paru … and we would to the rotten corn. … It's not there [now] because [of] a mill up the top … they put all their sawdust over the hill, and blocked our stream off. … It was just a stream that ran from over there, across the farm, right down the side … and out into the swamp out there, where we used to get our tuna.*
>
> *It's all their tanalising… the stuff they were using that used to tanalise their wood. It would seep down the hill, into the creek, basically ruining it completely. Not only the saw dust, but it was all the pollutants they were using. It's actually still the same."*

47. The Tongariro Power Scheme detrimentally affected water flows in the river which has caused a decline in available food sources. The impact on the awa is felt throughout all regions where the awa flows as water is diverted through the Poutu Canal, where the water travels under State Highway 1 and State Highway 46 to the Poutu Stream. Joining with the Poutu Stream, the water enters Lake Rotoaira, where it merges with water from the Western Diversion.[35]

48. Sewage disposal is another major issue for the claimants. The towns of Taihape, Mangaweka, Hunterville, Marton, Halcombe, Bulls, and Tangimoana, deliberately dispose of, or have disposed of, raw sewage into the River.[36] All the while the Crown watched on and allowed it to happen despite Te Tiriti guarantees to Māori that it would actively protect Māori resources and taonga.

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[33] Wai 2180, # A44 at 211.
[34] Wai 2180, # A44 at 250.
[35] Genesis Energy https://www.genesisenergy.co.nz/assets#tongariro; Department of Conservation https://www.doc.govt.nz/globalassets/documents/science-and-technical/sr16.pdf (accessed 10 December 2020).
[36] Wai 2180, F7 at [49].

49. The flow on effect has been a significant loss of freshwater shellfish, food plants and drinking water,[37] meaning that the river can no longer be relied on to sustain the hapū.

50. Further effects include the build-up and increase of algae in the river. Although algae is an inherent part of the river's ecosystem as it helps to purify the water,[38] Ngāti Parewahawaha members began to notice an increase in algae growth in the river particularly in areas of the river and waterways where algae had never previously been found:[39]

> *"The other thing with this river now that I've noticed in the last probably ten years, because it's dropped so low in the summer, it heats up. We've got a growth in here, an algae growth. It never used to be in here. … we put a net down by the Mountain River. It's full of algae, it breaks off and flows down the river and fills the net up and sinks it. But, with that algae has come Grey Mullet, which is another species of fish up here. Because they won't take bait, and they only feed on seaweed and things like that, they don't eat anything. We've seen them right up here, in the river here, but they've gone right up further. That's the only reason why they're here, because of that algae. That's what they're feeding on. That's kept the whole ecosystem upside down."*

51. Clearly, the increase in algae is a direct result of the increase in toxic pollutants that have been discharged and introduced into the river and waterways. The claimants say that poor water management by the Crown has caused this once thriving and plentiful resource for the hapū to essentially degrade and perish.

Failure to protect the mauri of the river

52. Furthermore, Ngāti Parewahawaha also relied on the river as a source of spiritual healing[40] for the hapū as a tūpuna awa.[41]

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[37] Wai 2180, # A44 at 212.
[38] Department of Conservation https://www.doc.govt.nz/nature/native-plants/freshwater-algae/
[39]
[40] Wai 2180, #A44 at 139.
[41] Wai 2180, #A44 at 167.

53. The mauri (life force) of the river descends from 'ngā Ātua', and the late Professor James Ritchie articulated it in the following way:[42]

> *"The purity of water is precious and jealously guarded because the mauri, the vital essence, is the same spiritual stuff as vivifies and enlivens human beings and all other living things. To violate the purity of water is therefore to violate your own essential purity."*

54. The claimants say that the mauri of the river has suffered due to sewage discharge from the towns and poor water management,[43] adversely affecting the spiritual well-being of the river. As a result the hapū is unable to practice or acquire spiritual healing as they once did.

55. Under tikanga, "(t)he water is considered to have lost its power or force and become metaphysically dead when there is a discharge of effluent".[44] Specifically, the mauri of the Rangitīkei River has deteriorated as a direct result of pollution. The claimants submit that this is due to the fact that the introduction of unnatural waste and refuse into the river has caused the equilibrium of the environment to be tilted off balance. The claimants say that the Crown has allowed this to happen through poor water management and a general disdain for kaitiakitanga. Even more disheartening is that the Crown has done nothing to remedy it.

56. The Moawhango Dam and redirection of water from the Mowhango River to the Rangitīkei River has caused the mixing of the mauri of the awa which is an important issue for Ngāti Parewahawaha. The claimants say that their tikanga has been disregarded for the purposes of economic advancement.

57. At hearing week 2 Sir Douglas Kidd appeared alarmed at the level of pollution experienced within the Taihape rohe, in spite of the inquiry district's modest population:[45]

> *"… we have a statistical profile on the record of inquiry and you may be interested to know that all this terrible pollution and stuff is caused*

[42] Wai 2180, #A44 at 111
[43] Wai 2180, #F7 at [29].
[44] Wai 2180, #A44 at 112.
[45] Wai 2180, 4.1.9 at 127.

by Inquiry District population of a mere 5574. So we are dealing with one of the lowest populations in the country in a fairly large piece of its land area with a fairly large river and reasonable sized tributaries and it's being represented to us as already in hell in a hand basket if not worse."

58. However, perhaps more alarming is the fact that the Crown has allowed this to happen in breach of its own Te Tiriti duties to Māori. No good faith consultation with Ngāti Parewahawaha was initiated by the Crown or its agents in regard to; healthy practices; maintenance; regard for tikanga; or environmental management in relation to the Rangitīkei River or its tributaries.

59. The claimants submit that the Crown failed to properly protect the environment of the claimant's rohe, including: the lands, waters, waterways, environments, and resources comprising the Rangitīkei Awa and its tributaries.[46] No significant consideration was given to the impacts that contamination of the river would have on Ngāti Parewahawaha and their ability to survive. Nor was adequate consideration paid to how Ngāti Parewahawaha would be able to continue their customary practices and tikanga in regard to the river. The claimants submit that this is another example of how the Crown breaches Te Tiriti by devaluing the interests and tikanga of Māori.

Crown's Native Land Regime

60. The claimants submit that the Crown enacted land legislation that deliberately sought to alienate Māori from their land under the Native Land Acts, in breach of Te Tiriti principles of partnership, good faith, and consolation.

61. Counsel adopt claimant generic submissions in relation to Economic Development, Crown purchasing, and Wāhi Tapu.[47]

62. The claimants say that for the purpose of these submissions, any reference to the "Crown's native land regime" is a term that collectively refers to; the native land acts; native land court and its processes; and the Crown's land tenurial system in general.

[46] Wai 2180, #A44 at 211-212.
[47] Wai 2180, #3.3.50; Wai 2180, #3.3.49; Wai 2180, #3.3.42.

63. Although Ngāti Parewahawaha interests primarily reside further south of this inquiry district, the detrimental effects of the native land acts were widespread and felt across the rohe, therefore counsel make submissions on the effects of native land legislation generally.

64. The claimants submit that that under the native land acts the court's failed to recognise interests other than full legal title so the wāhi tapu and sites of significance still recognised by the hapū today afford them no rights beyond what others are willing to grant them. For Ngāti Parewahawaha, this means that they essentially have been left with few (or no) legal rights to lands within the Taihape district.

65. The claimants further say that the Crown's land tenurial system has created an environment that is contrary to their tikanga.

66. Under Te Tiriti the claimants submit that it is the Crown's responsibility to maintain the equilibrium in the Te Tiriti partnership through its protection of rangatiratanga, because the power imbalance between Te Tiriti partners lies in the Crown's favour.

67. However, the Crown has for the most part in the Te Tiriti relationship between Ngāti Parewahawaha and the Crown, solely advanced its own interests ahead of those of the Māori and hapū.

68. The claimants say that the duties are clear, in that the Crown has:

    (a) A duty to actively protect Ngāti Parewahawaha to ensure that they retained sufficient lands and resources to benefit from settlement. This included:[48]

        (i) ensuring that Māori retain sufficient lands and a resource base for their economic development and to take advantage of future economic opportunities;

[48] Wai 2180, #3.3.50 at [3].

(ii) facilitating or assisting Taihape Māori to participate in those opportunities and to overcome barriers that the Crown had created; and

(iii) providing Taihape Māori with active assistance to development opportunities to deliver on the Te Tiriti bargain of mutual prosperity from settlement.

69. Instead, Ngāti Parewahawaha were forced to fight with other hapū for legal rights to land out of what remaining Māori land remained in the rohe.

70. The Crown conceded that the individualisation of Māori land tenure by the Native Land Laws made the lands of iwi and hapū in the Taihape district more susceptible to fragmentation, alienation and partition and this contributed to the undermining of tribal structures in the district.[49] However, it is important for counsel to provide further context so that the Tribunal can discover that the widespread alienation of Māori land that occurred under the native land regime, was by design and not accidental.

71. This is especially true as this new land tenurial system had been imposed on Ngāti Parewahawaha and replaced in no uncertain terms Māori customary practices of collective land ownership under tikanga.

72. The Crown stripped the hapū from having any meaningful opportunities to benefit from their own lands, and as a result of not being able to take advantage of the primary economic, land-based, opportunities in the district, Taihape Māori participated in wage work as their main involvement in the district's economy.

73. Recent findings of the Tribunal in the Te Rohe Pōtae report Te Mana Whatu Ahuru highlighted the interconnection between various aspects of social, cultural, and economic wellbeing:[50]

> *It is impossible to calculate the longer-term damage to Māori health, well-being, and economic success that arose from this rapid loss of land and opportunity, but it is certain to have been substantial. We*

[49] Wai 2180, #3.3.50 at [4.21].
[50] Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* (Wai 898, 2020) vol. 5, at 60, 133.

find that, through these actions, the Crown failed in its duty of active protection through failing to protect Te Rohe Pōtae Māori from the adverse effects of settlement. … Previous Tribunals to engage with these issues have drawn clear links between land loss, poverty, and the poor performance of Māori across a range of social indicators, including educational attainment.

74. It is this link between land loss and socio-economic decline that the claimants want the Tribunal to contemplate when considering these submissions.

No Consultation in the Design and Enactment of Native Land Legislation

75. The claimants submit that in breach of Te Tiriti principles, the Crown created and utilised the native land tenure process to: effect rapid land alienation and accelerate land sales of Māori land; and displace tikanga and Māori customary practices over land.

76. In sum, reading of the Native Land Acts and their overall impact on the land tenure system reveals a number of key themes that were impinged on the rights of Māori land owners, including:

    (a) Lack of consideration given to the impacts of Native Land Acts on hapū;

    (b) Lack of provision in Native Land Acts for tikanga Māori;

    (c) Māori custom in regard to land was eroded due to the native land tenure system; and

    (d) Native Land Court played a significant role in alienating Māori land.

77. When making its conclusions on the Native Land Acts the Tribunal in the Hauraki Inquiry said it had to consider "… whether settler and Māori needs and aspirations could have been met within the framework of customary law, or whether the customary framework would have proved too limiting".[51]

[51] *The Hauraki Report Volume 2* at 662.

78. However, the claimants submit that the Crown did not even contemplate the possibility of whether tikanga and Pākehā law could co-exist and whether this could occur on equal pairing. Namely, the claimants say that Ngāti Parewahawaha were not even afforded the opportunity to engage and explore this as a possibility.

79. Again, the claimants say that the Hauraki Tribunal considered it well when it stated:[52]

> *"In our view, the Crown's duty of active protection of Māori rights under the Treaty implies that, at the very least, the changes introduced by governments should have been made with the understanding and consent of Māori, and should have assisted Māori to engage, in a controlled and positive manner, with the new needs and exigencies that confronted them, including development of their own land for the commercial economy."*

80. The claimants say that an onus existed on the Crown as a Te Tiriti partner to duly consult with Māori in the creation, design, and implementation of Crown legislation. The Crown should have consulted and engaged with Ngāti Parewahawaha prior to establishing the Native Land Acts; however, this was not done and so Ngāti Parewahawaha were prejudiced as a result of Crown breaches of Te Tiriti.

Mechanisms

81. The claimants submit that the Crown is in breach of the principle of active protection, as the Crown allowed the Native Land Court to unfairly alienate thousands of acres of land from Māori owners. The claimants say that the Crown sat idly by while the processes and unjust judgements of the Native Land Court advanced Pākehā interests over those of Māori despite many Māori having legitimate claims.

82. The Native Land Act 1865 officially established the Native Land Court under s 5 of the act. Māori were now required to seek exercise of the provisions of the Native Land Acts through the Native Land Court regime.

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[52] *The Hauraki Report Volume 2* at 662.

83. As a hapū Ngāti Parewahawaha have been involved in multiple Native Land Court litigations (albeit outside of the inquiry district), and are well-tuned to the multiple issues that arise out of the Court's various and complex processes. In this regard, Ngāti Parewahawaha support the Taihape claimants that maintain that the Native Land Court had a detrimental impact on the Māori land in the Taihape inquiry district.

84. The Native Land Court system was a, "well-oiled State machine"[53], whose primary objective, "was the acquisition of Māori land".[54] A key way the Court set out to achieve this was by converting communally owned land once held under customary title into individual title. That way Māori land could be, "assimilated into British law".[55]

85. Court costs, legal fees, and survey costs, also became burdensome on litigants, and many of the Māori claimant groups would accumulate large debt throughout the process. A significant portion of the value of a block could be consumed by its survey costs alone.

86. According to Subasic and Stirling:[56]

> *"Court fees, along with the inevitable costs that came along with the Court process including lawyers, interpreters and a host of other unsavoury characters all formed a heavy financial burden on the Maori claimants. Survey costs, which were extremely high and inevitably charged against the block, were the heaviest. Yet such costs, as high as they were, were almost impossible to avoid under the Native Land Court machinery. But the associated costs attendant with the Native Land Court process – travel, accommodation, provision of food and other life necessities, were just as high a burden for those attending the Court."*

[53] Wai 2180, #A44, P Meredith, R Joseph and L Gifford *Ko Rangitīkei Te Awa: The Rangitīkei and its Tributaries Cultural Perspectives Report* at 216.
[54] Wai 2180, #A44, P Meredith, R Joseph and L Gifford *Ko Rangitīkei Te Awa: The Rangitīkei and its Tributaries Cultural Perspectives Report* at 214.
[55] Wai 2180, #A44, P Meredith, R Joseph and L Gifford *Ko Rangitīkei Te Awa: The Rangitīkei and its Tributaries Cultural Perspectives Report* at 214.
[56] E Subasic, B Stirling, *Sub-district block study – central aspect*, at 75 – 76.

87. Court sittings could last for months or even years. The stress and anguish put on Taihape Māori litigants would have been significant.

88. The individualisation of title was ushered in under the Native Lands Act 1862. Under the Act the Crown sought to displace the Māori practice of collective ownership (under tikanga) for individual ownership rights under Pākehā law.

89. Individualisation of title became a key mechanism in the Crown's attempt to subjugate tikanga and was further perpetuated by the succeeding Native Land Acts that followed.

90. The 10-owner rule introduced in the 1865 Act prejudiced Māori as most whānau, hapū or iwi were commonly larger than 10 members.

91. Under the tenurial system Māori land became subjected to fragmentation, which caused Māori land blocks to diminish in size due to partitioning larger blocks into smaller parcels of land.

92. An effect of this was that traditional leadership structures within hapū became eroded as special ownership interests over smaller parcels of land were vested in individuals rather than the hapū. As a result, it became increasingly difficult for hapū rangatira to exercise a chiefly role over Māori land that was once occupied and 'owned' collectively by the members of the hapū.

93. Tikanga was further eroded through the process of fractionisation as owners of Māori land were now allocated shares that quantified the size of an owner's interests in a particular land block. Disputes became common as owners argued over: succession issues; named owners on land titles; the size of one's shares; and more.

94. The Crown's pursuit of assimilating and displacing Māori forms of customary ownership in order to acquire more Māori land would continue under succeeding Native Land Acts throughout the mid- to late-1800s.

95. The importance of whakapapa was severely diminished under the tenurial land system. The whakapapa bond between Māori and

their land did not matter when measured against an owner's legal title to the land under Pākehā law.

96. Māori land could be on-sold to private owners without the need to consult with the hapū or rangatira, further alienating Māori land from the original occupiers and 'owners' of the land under tikanga.

97. Furthermore, the legal principle of indefeasible title further diminished the strength of Māori claims to land as the whakapapa bond to the land became more-and-more disconnected due to multiple transactions of selling and re-selling of Māori land to multiple different owners.

98. The claimants submit that the effects of this can still be felt today as Māori litigants attempt to re-claim land formerly owned by their ancestors, but face almost insurmountable challenges to do so as from a legal perspective their connections to that land have become too far removed. However, the claimants submit that under tikanga that whakapapa connection to that land can never be severed.

99. Through the native land regime the Crown continued to advance its own interests and the interest of Pākehā settlers all in spite of the Te Tiriti guarantees given to Māori through the following treaty principles; duty of active protection; duty to act in good faith; and equal partnership.

100. The claimants submit that based on the considerations above Ngāti Parewahawaha and other Māori land owners were already at a severe disadvantage when engaging with the Court, highlighting how unjust and unfair the Crown's native land regime was on Māori who were trying to assert their interests.

CONCLUSION

101. In summary, key issues for Ngāti Parewahawaha are:

    (a) The long-term and detrimental affects of pollution (and concommitant issues) of the Rangtīkei River. The hapū's use and reliance on the river as a natural resource has been signifantly depleted.

(b) Land loss throughout the district as a direct result of native land legislation. The Crown purposely drafted the native land acts to make it easier for the Crown to acquire or alienate Māori land to Pākehā settlers.

(c) Economic decline and loss of economic potential due to land loss.

(d) The significant role of the Native Land Court in advancing Pākehā interests above those of Māori.

(e) Disregard for tikanga and customary land interests.

(f) Decline and disregard for the environment and the Taihape districts natural resources.

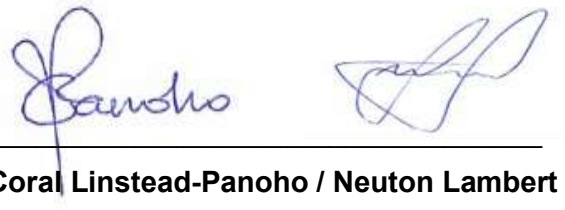
102. As stated, the Ngāti Parewahawaha claim has partial interests in this inquiry and do not purport to assert any substantial land interests. However, the claimants submit that the evidence is clear and overwhelmingly in favour of the case for the claimants.

REMEDIES

103. Ngāti Parewahawaha seek findings and recommendations that take into account the entire narrative of their kōrero, and consider the Te Tiriti breaches made against them and other hapū within the district by the Crown.

104. In light of this the claimants seek findings and recommendations that the Tribunal deems fit and appropriate to remove the prejudice suffered by the claimants.

Dated at Auckland this 21st day of December 2020



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