I ROTO I TE TARAIPIUNARA WAITANGI

IN THE WAITANGI TRIBUNAL

Wai 2180

IN THE MATTER	of the Treaty of Waitangi Act 1975
AND	
IN THE MATTER	of the Taihape: Rangitīkei ki Rangipō District inquiry

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CLAIMANTS' GENERIC REPLY SUBMISSIONS ON 'ISSUE 19: CULTURAL TAONGA'

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. These generic reply submissions are filed in response to the Crown Closing Submissions in Relation to Issue 19: Cultural Taonga ("the Crown closing").[1]

2. Taonga in their various forms are woven into the very fabric of Māori society. Taonga can range from being the mauri of a river to a crafted work of art. All tāonga are guaranteed under te Tiriti ō Waitangi but despite that guarantee, the cultural tāonga of Taihape Māori have been harmed and/or they are vulnerable.

3. The Crown submits that work is underway to respond to and progress the recommendations made by the Waitangi Tribunal in *Ko Aotearoa Tenei* (the Wai 262 Report) and its relevance to all of the matters covered in these submissions.[2] The Wai 262 report was released in 2011, a decade ago, and work **is still underway** to respond to and progress the Tribunal's recommendations. The delay encountered is wholly unsatisfactory. The delay casts significant doubt on the Crown's sincerity as a treaty partner and its ability to act with good faith on treaty-related matters. The laxity the Claimants have encountered prompts a watchdog, a performance monitor, in the form of the Office of the Māori Ombudsman, who can be tasked with, inter alia, keeping the Crown on track with the timely and considered implementation of adopted Waitangi Tribunal recommendations.

4. It is submitted that the guarantee of te tino rangatiratanga in te Tiriti ō Waitangi gives Taihape Māori the exclusive right to exercise tikanga Māori over their taonga and make decisions concerning their protection. The Crown, as a treaty partner, must recognise and give effect to the tino rangatiratanga of Taihape Māori with respect to their cultural taonga. The Crown must consult with Taihape Māori regarding the protection thereof, otherwise the Claimants' cultural tāonga will continue to be compromised. The Crown's obligation to protect cultural taonga is expressly provided for

[1] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94
[2] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [4].

under Article II of te Tiriti ō Waitangi. Lord Woolf of the Privy Council confirmed this:[3]

> This relationship the Treaty envisages should be founded on reasonableness, mutual cooperation and trust. It is therefore accepted by both parties that the Crown in carrying out its obligations is not required in protecting taonga to go beyond taking such action as is reasonable in the prevailing circumstances. While the obligation of the Crown is constant, the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time.

5. On occasion, responding to the Crown closing has been difficult because numerous broad references to other Crown closing submissions are made and adopted. It is unclear how the other closing submissions referred to are relevant to the cultural tāonga claim issues at hand. For example, in its response to Issue 19.1, the Crown stated that a range of institutions were introduced, including the Native Land Court, Crown departments and agencies and others.[4] It is accepted that a range of Crown institutions have affected the cultural tāonga of Taihape Māori. However, it was expected that having listed the Crown institutions, the Crown would explain how each of the institutions has affected the Claimants' cultural tāonga. This is not what occurred. Instead, it has been left to claimant counsel to discern how the institutions referred to by the Crown have affected the Claimants' cultural taonga. This is a difficult task to complete because the institutions operated for many years and they are multi-faceted in terms of their policies, practices, acts and omissions. Furthermore, we are being asked to place ourselves in the minds of those who designed and/or staffed the institutions and this cannot be done. Accordingly, if we have not responded to some of the Crown's submissions on cultural tāonga, it is not through want of trying and it is not because there are no issues with the Crown's submissions. Unfortunately, we have had to take the irregular step of raising concerns with the approach the Crown has taken on occasion in its submissions on cultural tāonga to explain why there is sometimes no corresponding submission in

[3] *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC), at 517.
[4] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94, at [9].

reply from claimant counsel when perhaps it is perceived that there should be.

6. The other Crown closing submissions that are said to be relevant to the Crown closing are as follows:[5]

a.	Constitutional Issues	Issue 1;
b.	Political Engagement	Issue 2;
c.	Native Land Laws	Issue 3;
d.	Crown Purchasing	Issue 4;
e.	Local authorities	Issue 10;
f.	Landlocked lands	Issue 11;
g.	20th Century land alienation	Issue 12;
h.	Environment	Issue 16;
i.	Education and Social Services	Issue 18; and
j.	Wāhi Tapu	Issue 21.

Issue 19.1: In general, has the Crown introduced its own institutions into the inquiry district contrary to the wishes of Taihape Māori? If Taihape Māori expressed their opposition, how did the Crown respond? Did the Crown breach any Treaty duties by introducing such institutions?

7. The Crown contends that its "institutions were not introduced contrary to the wishes of Taihape Māori."[6] Having said that, the Crown undermines its contention with the subsequent submission that a range of views prevailed "among Taihape Māori as to the introduction of these institutions and governance entities."[7] The truth of the matter is that Taihape Māori opposed the Crown's institutions for as long as they were able to do so. For instance,

[5] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [5].
[6] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [10]
[7] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [12]

in 1850 Taihape Māori opposed the Crown's land purchasing institution.[8] There is evidence that the Crown's assumption of sovereignty was opposed by Taihape Maori. The southern boundary of the Kīngitanga's Rohe Tapu was fixed at Te Houhou in 1860.[9] Adherence to the Repudiation movement by Mōkai-Pātea Māori was a manifestation of opposition to Crown institutions:[10]

> Patently aware of how prejudicial the native land legislation would be to their maintaining their land interests, Taihape Māori petitioned Parliament in 1872, the same year as the court's first title investigation in the region.

8. The opposition of Taihape Māori to the Native Land Court continued until the end of the 19th century in the form of avid support for the Te Kotahitanga movement. For instance, Kaiewe Marae was built "for the Kotahitanga movement".[11] On 2 August 1893, less than two months after the inaugural Paremata Māori at Waipatu, a hui for the "Western and Eastern Districts" of Te Kotahitanga was hosted by Ngāti Whiti, Ngāti Tama, Ngāti Hauiti and Ngāti Te Rangi Haukaka at Kaiewe Marae in Te Tahi ō Pipiri whare tūpuna.[12]

9. Taihape Māori opposed the Crown's institutions for as long as they could withstand them. In the end however, Taihape Māori were coerced into submitting to them.[13] The Crown also used oppressive and undemocratic means to gain submission.[14]

10. The Crown contended that the introduction of its institutions has been "for the mutual benefit of Māori and non-Māori" and that their introduction "is not inconsistent with the Crown's kawanatanga right".[15] This is not accepted. The Crown's kawanatanga right was limited by Governor Hobson in 1840 to

[8] Walzl, T., *Tribal Landscape Overview Presentation Summary*, Wai 2180, #A12(a), at 22; Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 333.
[9] Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 20.
[10] *Generic Constitutional Issues Closing Submissions*, dated 12 October 2020, Wai 2180, #3.3.54, at [232]. The evidential source is Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, #A43, at 237.
[11] Statement of Evidence of Richard Steedman, 21 March 2018, (revised 5 June 2018), Wai 2180, #J15, at [23].
[12] Statement of Evidence of Richard Steedman, 21 March 2018, (revised 5 June 2018), Wai 2180, #J15, at [24].
[13] *Generic Constitutional Issues Closing Submissions* dated 12 October 2020, Wai 2180, #3.3.54, at [299] to [346].
[14] *Generic Constitutional Issues Closing Submissions* dated 12 October 2020, Wai 2180, #3.3.54, at [347] to [428].
[15] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [11].

governance over the settler population only. A key evidential finding made by Te Paparahi o Te Raki Tribunal concerned the representations and proposals put to the northern rangatira by "Hobson and his agents".[16] They were such that they caused the signatory rangatira to believe that they were not ceding their sovereignty by signing:[17]

> The authority that Britain explicitly asked for, and they accepted, allowed the Governor to control settlers and thereby keep the peace and protect Māori interests.

The Crown did not have a kawanatanga right to impose its institutions on tangata whenua.

11. The Claimants respectfully submit that any suggestion that the introduction of the Crown's institutions accorded with the wishes of Taihape Māori cannot be made for the simple reason that their wishes were not sought or considered before the institutions were introduced. Even the "Crown acknowledges that, in establishing these institutions and governance entities, it did not consult specifically with Taihape Māori".[18]

Issue 19.2 Are the following taonga of Taihape Māori, in terms of the Treaty?

A. Wāhi tapu, urupā and sites of significance; and

B. Rongoā, and its application

12. The Crown acknowledges that wāhi tapu, urupā, sites of significance and rongoā can be taonga.[19]

13. While the Crown accepts that tāonga can include wāhi tapu, urupā and sites of significance,[20] the Crown claims that whether something is taonga can be

[16] Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry,* (Wai 1040, 2014), at 529.
[17] Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry,* (Wai 1040, 2014), at 528.
[18] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [12].
[19] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [15-16].
[20] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [17].

tested.[21] There are concerns with any proposed 'tāonga test'. We refer to the following passage from the judgment of Viscount Haldane in the 1921 Privy Council case of *Amodu Tijani v Secretary, Southern Nigeria*:[22]

> **There is a tendency, operating at times unconsciously, to render that title conceptually in terms which are appropriate only to systems which have grown up under English Law. But this tendency has to be held in check closely**. As a rule, in the various systems of native jurisprudence throughout the Empire, there is no such dull division between property and possession as English lawyers are familiar with. A very usual form of native title is that of a usufructuary right, which is a mere qualification of or burden in the radical or final title of the Sovereign where that exists.
>
> (emphasis added)

The restraint advocated for by Viscount Haldane when applying English law to native title in land should also be applied when testing for tāonga.

14. The Court of Appeal in *Ngati Apa* put it another way. The nature and extent of native title depends on how it is described by tangata whenua:[23]

> The property interest the Crown had therefore depended on any pre-existing customary interest, the extent and content of which was a matter of fact discoverable, if necessary, by evidence of the custom and usage of the particular community.

Whether an item is a taonga is a matter of fact discoverable by evidence of custom and usage of the tāonga by Taihape Māori. In other words, the English common law is not the measure for determining the existence of cultural tāonga.

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[21] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [16]
[22] *Amodu Tijani v Secretary, Southern Nigeria* [1921] 2 AC 399 (PC); *Attorney-General v Ngati Apa* [2003] 3 NZLR 643, at [33] per Elias CJ.
[23] *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 at 644.

Issue 19.3: In respect of any of the above that are taonga:

A. What was the Crown's duty, if any, to protect those taonga?

B. Has the Crown met its duty? If not, what specific examples are there of legislation, policy and practices of the Crown that have failed to protect the taonga?

15. Having acknowledged that it has a duty to protect the taonga of Taihape Māori,[24] the Crown qualifies its duty in circumstances where it is not aware of the existence of tāonga.[25] With respect, the Crown should not attempt to qualify its duty in this way. Whether tāonga are protected or not should not depend on Crown knowledge of the existence of taonga. After all, whether an act is illegal or not does not depend on the Crown's awareness of the act.

16. The qualifier that the Crown puts on its duty to protect tāonga connotes that interference with the Claimants' cultural tāonga is allowable so long as the Crown remains unaware of the tāonga and of its violation. This is not the message that the Crown should be sending. The Crown's duty to protect tāonga should extend to all tāonga, whether they are known or unknown by the Crown.

17. The Crown qualifies its duty to protect the Claimants' cultural tāonga where they are not situated on Māori land.[26] This sends the wrong message as well. This particular qualifier can be taken to mean that cultural tāonga that are situated on non-Māori land are not protected by the Crown.

18. There should be no qualification on the Crown's duty to protect the Claimants' cultural tāonga. No matter where the cultural tāonga are located and whether or not the Crown is aware of the cultural tāonga, the Crown has a duty of protection.

19. The Crown qualifies its protection of wāhi tapu, sites of significance, urupā and rongoa.[27] In reply, the Claimants adopt the Claimants' Wāhi Tapu

[24] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [20]
[25] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [20.2].
[26] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [20.4].
[27] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [21].

Generic Reply Submissions ("the Wāhi Tapu generic reply") at paragraphs 5 to 15. At paragraph 5, the Office of the Site Assessor is proposed for the purpose of identifying and policing all wāhi tapu. At paragraphs 5 to 15, it is contended that the Crown cannot rely on the English common law to qualify its duty to actively protect the Claimants' wāhi tapu.

20. In reply to the Crown's submissions concerning the Tohunga Suppression Act 1907, the submissions made above in paragraph 3 are adopted.

Issue 19.4: What is the Crown's duty with respect to tikanga Māori under the Treaty? Has tikanga been given effect or otherwise acknowledged by the Crown in Taihape?

21. The Crown considers that the Claimants "are primarily responsible for the development, regulation, control and use of their tikanga and Mātauranga Māori".[28] Whilst that may be so, the Claimants' responsibility for the development of tikanga and mātauranga Māori[29] does not absolve the Crown of its developmental responsibilities.

22. The Crown states that it is for Taihape Māori to advise what tikanga Taihape means today.[30] This activity constitutes the Claimants' developmental responsibility. In accordance with its developmental responsibility, the Crown should adequately resource the Claimants' tikanga-related developmental activities.

Issue 19.5: To what extent, if any, did legislation enacted by the Crown interfere with the retention and development of tikanga for Taihape Māori?

23. Having stated that "[a] correspondingly wide range of legislation is likely to have impacted"[31] the retention and development of tikanga Māori, the Crown appears to contradict itself with the subsequent statement that attributing any change to or development of tikanga Māori to Crown acts or omissions

[28] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [24].
[29] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [24]
[30] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [25].
[31] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [32].

is difficult.[32] It is not accepted that any change to tikanga Māori by Crown acts or omissions is unattributable to the Crown.

24. In the Claimant Generic Closing Submission on Cultural Tāonga ("the Claimant generic closing"),[33] the Claimants explain how legislation such as the Native Exemption Ordinance 1844, the Resident Magistrate Courts Ordinance 1846, the New Zealand Constitution Act 1852 and the Tōhunga Suppression Act 1907 interfered with the retention and development of tikanga Māori.[34] We add that the Native land legislative regime was particularly prejudicial to tikanga Māori as well. The Crown does not respond to the Claimant generic closing on these matters. As the Crown is silent, the Tribunal can only endorse the Claimants' generic closing with respect to Issue 19.5.

Issue 19.6: To what extent and in what ways, if any, have Crown legislation, policy and practice affected the tikanga of traditional Taihape Māori leadership structures?

25. The Crown conceded that the Native land laws undermined tribal leadership and they made Maori land more susceptible to partition, fragmentation, and alienation. Having conceded as much, the Crown failed to acknowledge that by undermining tribal decision-making, social cohesion amongst the hapū of Taihape was lost and this, in turn, affected the ability of Taihape Māori to cope with the new world they were being overwhelmed by.[35] A difficult situation was made even more challenging when tribal leadership was nullified.

26. The Crown stated that leadership structures evolved over time "due to a range of factors",[36] none of which were evidenced. The Crown stated that a "desire to act individually existed" but again no evidence is provided in support of this claim.

[32] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [33].
[33] *Claimant Generic Closing Submissions on Cultural Taonga* dated 12 October 2020, Wai 2180 #3.3.55.
[34] *Claimant Generic Closing Submissions on Cultural Taonga* dated 12 October 2020, Wai 2180 #3.3.55 at [173-193].
[35] *Claimant Generic Closing Submissions on Cultural Taonga* dated 12 October 2020, Wai 2180 #3.3.55 at [221].
[36] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [39]

27. The Native land laws impacted the role of wāhine Māori in Taihape. Not only was their mana with respect to the whenua compromised, wāhine Maori were also impacted by the sexism that was entrenched in the new legal system.[37] The political disenfranchisement of wāhine Māori was antithetical to the rangatiratanga that wāhine Māori wielded in traditional times.[38]

Issue 19.7: What was the impact of land alienation on the tikanga of Taihape Māori? Did the Crown consider the effect of the impact of land alienation on the tikanga of Taihape Māori, and if so, what conclusions did it draw?

28. The Crown admitted that it did not consider the impact of land alienation on the tikanga of Taihape Māori.[39] Having said that, the Crown then refers to its closing submissions on Issues 3, 4 and 6. There is no advice as to how the closing submissions on Issues 3, 4 and 6 are relevant to Issue 19.7. No particular submissions or paragraphs are referred to.

29. We note that Issues 3 and 4 address the Native Land Court and Crown land purchasing respectively. As we have noted above, the Native Land Court undermined the tribal structures of Taihape Māori and the Crown employed sharp land purchasing tactics to alienate lands from Taihape Māori. Based on our understanding of the Crown closing submissions on Issues 3 and 4, the Crown does not consider the impact of widespread land alienation on tikanga Māori.

30. We note that Issue 6 deals with the arrest and eviction of Winiata Te Whaaro and the destruction of Pokopoko. It is preferred that the claimant groups with claim interests about those events reply to the Crown's reference to its closing submissions on Issue 6 here.

[37] *Claimant Generic Closing Submissions on Cultural Taonga* dated 12 October 2020, Wai 2180 #3.3.55 at [211].
[38] *Claimant Generic Closing Submissions on Cultural Taonga* dated 12 October 2020, Wai 2180 #3.3.55 at [211].
[39] Crown Law, *Crown Closing Submissions in Relation to Issue 16A: Environment (Land)* dated 7 May 2021, Wai 2180, #3.3.85, at [41].

Issue 19.8: Is the knowledge held by Taihape Māori of traditional methods of sustainable harvesting and utilisation of flora and fauna a form of tikanga? If so, what duty does the Crown have to ensure that such aspects of the tikanga of Taihape Māori are maintained by provided for the continuation of these practices?

31. The Crown stated that knowledge held by Taihape Māori of traditional methods of sustainable harvesting and utilisation of flora and fauna may constitute a form of tikanga. The Crown then referred to its closing submissions in relation to Issue 16A on the environment.[40] In its environment closing submissions, the Crown merely stated that there is acknowledgement of the issues at hand at the local council level,[41] but no solution is provided.

32. The Crown also highlighted its attempts to protect traditional methods of sustainable harvesting and utilisation of floara and fauna.[42] We note, however, that none of the activities referred to concern any work undertaken in the Taihape inquiry district.

Issue 19.9: What is the Crown's role with respect to the tikanga of Taihape Māori today?

33. In response, the Crown refers to its closing submissions on Issue 19.4. Accordingly, the Claimants submissions concerning Issue 19.4 above are adopted here.

Issue 19.10: What is the Crown's duty to preserve the tribal identity of Taihape Māori whānau, hapū and iwi?

Issue 19.11: To what extent, if any, did the acts and omissions, legislation, policies and practices of the Crown, interfere with, undermine, redefine or even replace the tribal identities of Taihape Māori?

[40] Crown Law, *Crown Closing Submissions in Relation to Issue 16A: Environment (Land)* dated 7 May 2021, Wai 2180, #3.3.85.
[41] Crown Law, *Crown Closing Submissions in Relation to Issue 16A: Environment (Land)* dated 7 May 2021, Wai 2180, #3.3.85 at [164].
[42] Crown Law, *Crown Closing Submissions in Relation to Issue 16A: Environment (Land)* dated 7 May 2021, Wai 2180, #3.3.85 at [168].

Issue 19.12: What is the impact on the respective Taihape Māori whānau, hapū and iwi of the loss of their tribal identity since 1840?

34. The Crown accepts that it has a duty to protect matters central to the Claimants' identity, including te reo Māori, and tribal structures. The Crown conceded that it did not do this and that it breached te Tiriti ō Waitangi in these respects. Having conceded as such, the Crown stated that the extent to which any Crown actions affected Taihape tribal identity or the recognition of such identity is complicated by a range of non-Crown factors which may have also played a role, such as urbanisation and the way in which Taihape Māori chose to assert their tribal identities.

35. The Crown conceded that the operation of the Native land laws, in particular, the awarding of lands to individuals, undermined tribal leadership and it made Māori land more susceptible to partition, fragmentation, and alienation. The Crown's failure to protect tribal structures was a breach of the Treaty of Waitangi.[43]

36. As we have submitted above, not only did the Native land laws undermine tribal decision making, they unravelled social cohesion and the ability to withstand the onslaught of colonisation in a unified way. And so, for instance, tribal lands were alienated much more quickly and in a way that resulted in the remaining lands becoming fragmented in title and uneconomic. It became difficult to derive an income from uneconomic lands and so many Taihape Māori moved away from their traditional lands to find work. The reduced Māori population made it difficult for those who remained in the region to retain their tribal identity. These taxing circumstances resulted eventually in diminished knowledge and use of tikanga and kawa.[44]

CONCLUSION

37. The Crown introduced a number of institutions into the district contrary to the wishes of Taihape Māori. Taihape Māori sought to restrict the Crown's encroachments but their efforts were largely in vain. The institutions that were imposed upon them, including the Native Land Court, public schools,

[43] Crown Law, *Crown Closing Submissions Regarding Issue 19: Cultural Taonga*, dated 21 May 21, Wai 2180, #3.3.94 at [36].
[44] Neville Lomax, *Brief of Evidence of Neville Lomax*, dated 12 February 2018, Wai 2180, #I15 at [11-13].

the legal system and local and central government, diminished the Claimants' use and knowledge of their cultural tāonga. The Claimants' cultural tāonga were lost, compromised or made vulnerable. The Crown has failed to protect the Claimants' cultural tāonga. The Crown's failures make its inability to implement the recommendations of the Wai 262 Tribunal all the more frustrating for the Claimants.

38. What constitutes taonga is matter for tangata whenu to determine.

39. There should be no qualification on the Crown's duty to protect the Claimants' cultural tāonga. No matter where the cultural tāonga are located and whether or not the Crown is aware of the cultural tāonga, the Crown has a duty of protection.

40. Since the Crown cannot protect the Claimants' cultural tāonga, it is incumbent on the Crown to enable Taihape Māori to manage and protect their cultural tāonga.

41. Likewise, the Crown should assist the Claimants with the development, regulation, control and use of their tikanga. The Crown has enacted a plethora of statutes that have impacted the Claimants use and understanding of tikanga Māori. One consequence of the impactful legislation is the loss of tribal leadership. Another consequence has been the loss of tribal identity.

42. The Claimants' claims that the Crown has failed to protect their cultural tāonga are well-founded. Recommendations are respectfully sought from the Waitangi Tribunal that will cause the Crown to take prompt remedial action.

DATED at Auckland this 27th day of September 2021

Darrell Naden	Siaosi Loa	Krishneel Krishan Naidu
Counsel Acting	**Counsel Acting**	**Counsel Acting**