

IN THE WAITANGI TRIBUNAL

Wai 2180

IN THE MATTER

of the Treaty of Waitangi Act 1975

AND

IN THE MATTER

of the Taihape District inquiry (Wai 2180)

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**CLAIMANT GENERIC REPLY SUBMISSIONS IN RELATION TO ISSUE 2:  
POLITICAL ENGAGEMENT**

**Date: 1 October 2021**

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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 2: Political Engagement (“the Crown closing”).<sup>1</sup>

### Crown engagement began earlier

2. The Crown considers that engagement between the Crown and Taihape Māori began in the 1860s.<sup>2</sup> The same claim is made by the Crown in the Crown Closing Submissions in Relation to Issue 1: Tino Rangatiratanga (“Crown closing on tino rangatiratanga”).<sup>3</sup> In fact, according to the Crown, the exercise of Māori authority, the assertion of boundaries and the controlling of engagement with the Crown were not addressed by Taihape Māori until the Kōkako hui held in March of 1860.<sup>4</sup> With respect, the Crown submissions are incorrect. The evidence shows that there was earlier engagement in relation to the matters referred to above. Furthermore, it is important to consider the earlier engagement evidence for it establishes a pattern of not accepting the Crown’s authority. Instead, Taihape Māori sought to uphold their own.
3. In May 1849, the inland boundary of the Rangitīkei-Turakina block became the subject of dispute, with a strong stand being taken by “all Mōkai-Pātea groups to halt the boundary at Taraketi”.<sup>5</sup> A meeting was held at Parewanui on 30 July 1850 with Land Purchase Commissioner McLean that resulted in the boundary being fixed at Te Houhou, situated at the junction of the Rangitīkei River and the Pourewa Stream. The meeting was attended by many Mōkai-Pātea

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<sup>1</sup> Crown Law, *Crown Closing submissions in Relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90.

<sup>2</sup> Crown Law, *Crown Closing submissions in Relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90, a [1].

<sup>3</sup> Crown Law, *Crown Closing Submissions Regarding Issue 1: Tino Rangatiratanga*, dated 21 May 21, Wai 2180, #3.3.89, at [3].

<sup>4</sup> Crown Law, *Crown Closing Submissions Regarding Issue 1: Tino Rangatiratanga*, dated 21 May 21, Wai 2180, #3.3.89, at [3]. Earlier in the inquiry, the Crown noted that “[t]here is limited evidence of direct engagement between Taihape Māori and the Crown in relation to their lands prior to **the late 1860s.**” (emphasis added)—see *Crown Memorandum Contributing to the Preparation of a Draft Statement of Issues*, Wai 2180, #1.3.2, at [20].

<sup>5</sup> Walzl, T., *Tribal Landscape Overview Presentation Summary*, Wai 2180, #A12(a), at 22.

rangatira including Te Oti Pohe, Te Kaipou, Te Weu and Pōtaka.<sup>6</sup> As a result of the hui at Parewanui, the Crown was prohibited from purchasing land north of Te Houhou.

4. It is submitted that the boundary pou at Te Houhou was as much a political statement as it was a boundary marker. It was an assertion of authority that was aimed at land-selling iwi of the day and the Crown. Walzl saw the related events at Taraketi in terms of ‘a protest’ against land selling.<sup>7</sup> In this particular context, it is significant that Te Houhou became the southern boundary of the Kīngitanga’s Rohe Tapu ten years later in 1860.<sup>8</sup> This was attested to by many including Hiraka Te Rango,<sup>9</sup> Renata Kawepō,<sup>10</sup> Winiata Te Whaaro<sup>11</sup> and Horonuku Te Heuheu Tukino,<sup>12</sup> The pou erected by Taihape rangatira at Te Houhou in 1850 manifested their non-seller, anti-Crown stance as did, it is submitted, the selection of Te Houhou as the Rohe Tapu’s southern boundary a decade later at Kōkako. If, as the Crown has stated, Kōkako was “an exercise of rangatiratanga either as a response to or in anticipation of engagement with the Crown”, then the hui’s endorsement of Te Houhou as the Rohe Tapu’s southern boundary can mean that the establishment of Te Houhou as a boundary marker in 1850 was also an exercise of rangatiratanga viz a viz land selling iwi of the day and the Crown.
5. In the early 1850s, other pou were erected in opposition to land selling “on the Heretaunga side”.<sup>13</sup> It is submitted that the opposition of Taihape Māori to land selling in the mid-19<sup>th</sup> century (and thereafter) was primarily a political act as opposed to a concern about acreage prices or survey errors. There was a growing movement against selling land and Taihape Māori were involved with that movement. It would intensify during the 1850s to the point where war would

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<sup>6</sup> Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 333.

<sup>7</sup> Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 27.

<sup>8</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 20.

<sup>9</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 23.

<sup>10</sup> Renata Kawepo letter, *Te Wananga*, 4 September 1875, at 195, cited in Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 24.

<sup>11</sup> Winiata Te Whaaro, Mangaōhāne Rehearing 1890, N20/376, cited in Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 385.

<sup>12</sup> Te Heuheu, Rangipō-Waiū 1881, TMB 2/95-6, Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 385.

<sup>13</sup> Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 377, per Ūtiku Pōtaka.

break out elsewhere in the country over land and matters of authority in the following decade. The Crown submission that political engagement with Taihape Māori did not begin until the 1860s is not accurate. There was engagement between tangata whenua and the Crown before that time. More than that, it initiated a sustained pattern of engagement amongst Taihape Māori.

6. Related to the reply submissions made herein this section is the claim in the Crown closing on tino rangatiratanga that there is a paucity of “technical evidence of pre-1870 events in the inquiry district itself”.<sup>14</sup> As we have shown, there is evidence of Taihape Māori asserting their tino rangatiratanga in the late 1840s and early 1850s.
7. The events referred to herein this section are discussed at greater length in the Generic Constitutional Issues Closing Submissions (“the Claimants’ constitutional issues closing”),<sup>15</sup> and briefly in the Claimants’ Generic Reply Submissions for Issue 1: Tino Rangatiratanga dated 29 September 2021 (“the Claimants’ reply on tino rangatiratanga”).<sup>16</sup>

### **Queen’s authority not “generally recognised”**

8. In paragraph 3 of the Crown closing, it is claimed that “Taihape Māori generally recognised the authority of the Queen— . . .”.<sup>17</sup> A similar submission was made in the Crown closing on tino rangatiratanga”.<sup>18</sup> The Crown’s submissions cannot be accepted. They are not sourced. It is mere assertion.
9. Furthermore, no particular time period is referred to. If the Crown is claiming that “Taihape Māori generally recognised the authority of the Queen— . . .” from 1840 on, such a claim is wholly rejected. The Crown was without *de facto* sovereignty in the Taihape district in 1840 and for many years thereafter.

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<sup>14</sup> Crown Law, *Crown Closing Submissions Regarding Issue 1: Tino Rangatiratanga*, dated 21 May 21, Wai 2180, #3.3.89, at [4].

<sup>15</sup> *Generic Constitutional Issues Closing Submissions* dated 12 October 2020, Wai 2180, #3.3.54(b), at [299] to [346].

<sup>16</sup> *Generic Reply Submissions for Issue 1: Tino Rangatiratanga* dated 29 September 2021, at [3] to [5].

<sup>17</sup> Crown Law, *Crown Closing Submissions in Relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [3].

<sup>18</sup> Crown Law, *Crown Closing Submissions Regarding Issue 1: Tino Rangatiratanga*, dated 21 May 21, Wai 2180, #3.3.89, at [6].

10. According to the Crown, the “generally recognised authority of the Queen” “was not absolute, nor unconditional, nor fixed for all time”.<sup>19</sup> We are unsure as to how the Queen can claim to have authority when that authority is not “absolute”. Once authority has been ceded to or otherwise acquired by the Queen, there can be no half-way house because if there is the Queen does not have authority. .”.<sup>20</sup> In testimony given before Te Paparahi o Te Raki Tribunal, Dr McHugh stated that “there can be only one sovereign”.<sup>21</sup> That is the nature of British constitutional theory and law. However, since the Queen’s authority was not absolute, the Claimants’ tino rangatiratanga was not ceded and there is a constitutional state of power sharing between the treaty partners.
11. Likewise, although authority may be wielded by the Queen on a conditional basis, whereby, for instance, it must be wielded in accordance with the rule of law or in accordance with the rules of natural justice, if the Queen’s authority is conditional on adherence to that authority by her subjects and that adherence is not forthcoming, then authority that is conditional in this sense is not authority. And yet the remainder of paragraph 3 in the Crown closing concerns conditional adherence to the Queen’s authority by Taihape Māori with the Crown stating that Taihape Māori exercised “rangatiratanga” during the 1860s and 1870s. If acceptance of the Queen’s authority was conditional because Taihape Māori exercised “rangatiratanga” from 1840 to the 1870s, the Queen cannot have wielded authority at this time. Again, we refer to Dr McHugh’s evidence “there can be only one sovereign”.<sup>22</sup> Since, as the Crown has stated, Taihape Māori were exercising “rangatiratanga” until the 1870s, the Crown did not acquire sovereignty in 1840. Given these circumstances, the Crown’s claim that “Taihape Māori generally recognised the authority of the Queen” cannot be maintained.

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<sup>19</sup> Crown Law, *Crown Closing Submissions in Relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [3].

<sup>20</sup> Joseph, Philip A., *Constitutional and Administrative Law*, 4<sup>th</sup> ed., at 47.

<sup>21</sup> Waitangi Tribunal, *Hearing Week 4 Transcript*, Wai 1040, #4.1.4, page 534, lines 39-44 and page 535, lines 1-13.

<sup>22</sup> Waitangi Tribunal, *Hearing Week 4 Transcript*, Wai 1040, #4.1.4, at 534, lines 39-44 and at 535, lines 1-13, per Dr McHugh.

## **Range of positions claim**

12. The Crown claims that “Taihape Māori held a range of positions in relation to most of the political engagements discussed in these submissions . . .”.<sup>23</sup> But for engagement concerning the Repudiation Movement, no evidence is cited by the Crown in support of its ‘range of positions’ submission and therefore it cannot stand.
13. With regard to the Repudiation Movement, the Crown relied solely on Renata Kawepō’s actions therewith to prove that there were a ‘range of positions’. With respect, this is far from convincing. In the Claimants’ reply on tino rangatiratanga, submissions are made with regard to Renata’s leadership and how he was not always followed by the people of the Mōkai-Pātea on issues such as the Kīngitanga, military action for the Crown and the Repudiation Movement (“the Renata submissions”).<sup>24</sup> On the basis of the Renata submissions, it is submitted that Renata’s opposition to the Repudiation Movement does not necessarily mean that other Taihape Māori were also opposed. Since the Crown’s evidence in support of its ‘range of positions’ submission may just be Renata’s opposition, it cannot be said that the ‘range of positions’ claim made by the Crown has been established.
14. The Crown makes a similar claim about “a very wide range of political views and allegiances” at paragraph 22.<sup>25</sup> Again, no sources are cited. There should be sources with a contention of this magnitude but there is not. The submission cannot stand.

## **Self-government**

15. The Crown stated that Taihape Māori never attempted to create a self-governing district. This is not accepted. In the Claimants’ reply on tino rangatiratanga, reference is made to inclusion of the Mōkai-Pātea region in the Kīngitanga’s

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<sup>23</sup> Crown Law, *Crown Closing Submissions in Relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [4].

<sup>24</sup> *Generic Reply Submissions for Issue 1: Tino Rangatiratanga* dated 29 September 2021, at [27] to [35].

<sup>25</sup> Crown Law, *Crown Closing Submissions in Relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [22].

Rohe Tapu at the great hui at Pukawa in 1856 and then again at Kōkako in 1860.<sup>26</sup> The Rohe Tapu was a self-governing district. Evidence was cited of efforts by Taihape Māori to uphold the aukati following the cessation of fighting in the Waikato.<sup>27</sup> These particular events are discussed at some length in the Claimants' constitutional issues closing.<sup>28</sup>

### **Crown affirmation of tino rangatiratanga**

16. The Crown adopted the Rohe Pōtae Tribunal's "helpful framing of wider political engagement between Crown and Maori as it existed at 1840".<sup>29</sup> In so adopting, the Rohe Pōtae Tribunal affirmed the guarantee of tino rangatiratanga "for the existing autonomy and authority of Maori communities in relation to their lands, resources, and all other valued things to continue, . . .".<sup>30</sup> Furthermore, the Crown acknowledged the exercise of the rangatiratanga of Taihape Māori up to and including the 1870s.<sup>31</sup> These Crown submissions provide further affirmation that the Claimants' tupuna did not cede their tino rangatiratanga in 1840, and they affirm the retention thereof through to at least the 1870s. Furthermore, the existence of the Claimants' tino rangatiratanga and the Crown's acknowledgement thereof undoes the Crown's assumption of *de jure* sovereignty if British constitutional law is applied.
17. In the Crown closing on tino rangatiratanga, it is stated that the Crown established sovereignty in 1840. However:<sup>32</sup>

As the Crown increasingly exercised kāwanatanga powers within the district, the Crown accepts that adversely affected the exercise of tino rangatiratanga by Taihape Māori.

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<sup>26</sup> *Generic Reply Submissions for Issue 1: Tino Rangatiratanga* dated 29 September 2021, at [3] to [5].

<sup>27</sup> *Generic Reply Submissions for Issue 1: Tino Rangatiratanga* dated 29 September 2021, at [5].

<sup>28</sup> *Generic Constitutional Issues Closing Submissions* dated 12 October 2020, Wai 2180, #3.3.54(b), at [311] to [346].

<sup>29</sup> Crown Law, *Crown Closing Submissions in Relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90, at [11].

<sup>30</sup> Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, Wai 898, 2018, at 181.

<sup>31</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [16].

<sup>32</sup> Crown Law, *Crown Closing Submissions Regarding Issue 1: Tino Rangatiratanga*, dated 21 May 21, Wai 2180, #3.3.89, at [11].

The acquisition of *de facto* sovereignty by the Crown was carried out by way of oppressive and undemocratic means.

### **Kōkako and the Kīngitanga**

18. The Crown's view is that Kōkako was moreso about defining boundaries and the sale of land<sup>33</sup> than it was about the Kīngitanga.<sup>34</sup> This is not accepted. The Crown misconceives the purpose of the great hui because Kōkako is not seen in the context of the Pukawa hui of 1856 and the laying there of the Kīngitanga's Rohe Tapu boundary. With respect, the Crown's apparent inability to comprehend events at Kōkako leads to error with its understanding of it.
19. It is contended that Kōkako was convened to uphold the Rohe Tapu and the ban on the sale of all land situated within it. At the same time, an area in the south-western region was extracted from the Rohe Tapu so that Ngāti Apa, Ngāti Raukawa and Whanganui Māori could sell land from the extracted area. To remove the land, a boundary adjustment to the Rohe Tapu was required. Achieving the boundary adjustment was an arduous task that pre-occupied those who attended the hui. This explains the plethora of boundary korero, the debates about customary interests and the discussion about earlier Crown purchases such as the Rangitīkei-Turakina block purchase and the 1848 Whanganui block purchase. At the end of the day, the Rohe Tapu's southern boundary was adjusted from the Rangitīkei River mouth to Te Houhou. This is fitting for our purposes because a boundary marker was erected at Te Houhou 10 years earlier to ward off McLean's purchase attempts inside the Mōkai-Pātea. The placement of the southern boundary marker at Te Houhou in 1860 protected the Taihape region from land sales and it affirmed support from the region's inhabitants for the Kīngitanga.

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<sup>33</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [31].

<sup>34</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [34].



*Pukawa setting*

20. The Crown's understanding of Kōkako is flawed because there is a failure to see it in the context of the Pukawa hui held four years earlier. Walzl recorded the following about that meeting:<sup>35</sup>

To the north of Mokai Patea, over the 1850s, Ngati Tuwharetoa and Ngati Raukawa became mainstays of the Kingitanga movement. In 1856, Iwikau Te Heuheu called the great Pukawa hui summoning tribes from throughout the North Island. The object of this hui was “to consult and agree on the establishment of a King, the holding of the land and the mana and the symbolic binding of all the tribal mountains to the land, sky, and one another in kotahitanga (unity).” The tribes involved with the Kingitanga acted collectively to protect their lands, but they maintained their mana and autonomy over the land. The hui is believed to have been the largest gathering of tribes in the district ever held. Taylor reported that a boundary was established within which no chiefs could infringe by selling further land:

...Tongariro was the centre of a circle of which the circumference was the Hauraki, Waikato, Kawiamōkau [Kāwhia and Mōkau], Taranaki, Ngatiruanui, Waitotara, Wanganui, Rangitikei, Titiokura; that this was to be a Rohe Tapu...

Despite this report suggesting that groups from Mokai Patea participated in the hui, no specific reference to this has been located by research conducted to date. Iwikau Te Heuheu remained an ardent proponent and supporter of the movement to set up a Maori king. When Governor Gore Browne visited the Taupo district in 1857, Te Heuheu explained to him the purpose and aspirations of the Kingitanga movement as follows:

...the English were, by degrees, obtaining the best of their lands, and that they would soon be

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<sup>35</sup> Walzl, T., *Tribal Landscape Overview*, 2013, Wai 2180, #A12, at 379-380.

‘eaten up and cease to be’; that for these reasons they were determined to have a King of their own and assemblies of their own; that they would not interfere with the English in the settlements, but that the laws they intended to make should be binding on all who chose to reside among the natives.

21. Walzl’s record establishes how focused Pukawa was on the formation of the Kīngitanga. Although no specific reference was made to their participation, it seems likely that Mōkai-Pātea Māori were present given that it was the “largest gathering of tribes in the district ever held” and given that the Taihape district was included in Rev Richard Taylor’s description of the Rohe Tapu. It seems unlikely that at such a large public gathering, a region of the country would be included in the Rohe Tapu without the consent of the inhabitants thereof. In any event, the adjustment of the Rohe Tapu’s southern boundary to Te Houhou four years later at Kōkako should allay any doubt that the Taihape district was included in the Rohe Tapu at Pukawa.

*It was a Kīngitanga hui*

22. Before the mechanics of the Rohe Tapu’s boundary adjustment are explained, it is confirmed that Kōkako was predominantly about the Kīngitanga-focused hui. The work of a number of historians is relied on. A feature of the hui record that is available is the importance to hui-goers of holding the land, which is, of course, a key Kīngitanga policy. And so the discussion about pupuri whenua is consistent with the assertion that Kōkako was as much about the Kīngitanga as anything else.
23. Stirling made it clear that Kōkako was Kīngitanga-oriented. He also introduced the notion of a boundary adjustment:<sup>36</sup>

What emerged from Kōkako was not only the laying down of a boundary for the Whanganui and other tribes, but also the laying

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<sup>36</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 19.

down of a boundary for those pledging allegiance to Kīngitanga and wishing to place their lands under its protection.

Importantly for our purposes, Stirling recorded that Taihape rangatira pledged their allegiance to King Tāwhiao at Kōkako.<sup>37</sup> The Crown does not address this evidence even though it was also referred to in the Claimants' closing on constitutional issues.

24. Tony Walzl acknowledged the Kīngitanga's influence at Kōkako:<sup>38</sup>

In 1860, within the context of the rise of the Kīngitanga, opposition to land selling and inter-iwi tensions over land rights, Mōkai Pātea became hosts to a significant hui to try and gain some agreement in relation to inter-iwi spheres of influence. A grand meeting was arranged at Kokako, a Ngāti Rangituhia kainga in the Murimotu district, for the purpose of arranging tribal boundaries.

At hearing, Walzl agreed that discussion about the Kīngitanga at Kōkako and the fixing of tribal boundaries were not mutually exclusive.<sup>39</sup>

25. Although the Kīngitanga was not without its detractors, such as Pūtiki rangatira Te Anaua, Te Mawae and Hoani Hīpango,<sup>40</sup> Kōkako was primarily about gathering support for the Kīngitanga according to Fisher and Stirling:<sup>41</sup>

A focus of the 1860 hui at Kōkako was securing support for the Kīngitanga, and for those iwi who gave support to the movement to place their land within the Kīngitanga's protective rohe pōtae (thereby preventing purchase by the Crown), rather than to assert tribal claims to particular lands. The pou whenua may have been intended to mark the pan-tribal Kīngitanga rohe pōtae, rather than

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<sup>37</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 19.

<sup>38</sup> *Generic Constitutional Issues Closing Submissions* dated 12 October 2020, Wai 2180, #3.3.54(b), at [313].

<sup>39</sup> Waitangi Tribunal, Hearing Week 1 Transcript, Wai 2180, #4.1.8, at 244-5, per Tony Walzl.

<sup>40</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 19.

<sup>41</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [33]

the claims of particular tribal groups, as Renata [Kawepo]’s witnesses suggested in the Mangaōhane 1885 hearing].

The Kīngitanga’s appeal to hui-goers would have received a boost given that just a few days before the hui began, the Crown attacked Wiremu Kīngi at Te Kohia Pā near Waitara, setting off the first Taranaki War

26. Ballara discussed Kōkako in the context of Iwikau Te Heuheu’s efforts “in setting up the King’s boundary for the district south of Tongariro”.<sup>42</sup> A brief observation made by Richard Taylor and recorded by Ballara is evidence that the Rohe Tapu was upheld at Kōkako by its attendees—“all they did was to advocate its being tapued [sic] to the king”.<sup>43</sup>

#### *Boundary adjustment made*

27. Stirling writes at length about the Kōkako.<sup>44</sup> Given that the Rohe Tapu had been defined at Pukawa four years earlier, the reference below to “defining the Kīngitanga rohe” must concern the boundary adjustment spoken of:<sup>45</sup>

This meant the boundaries being defined at Kōkako were as much political as tribal, notably with respect to defining the Kīngitanga rohe in this region.

28. Winiata Te Pūhaki’s understanding of the meeting’s purpose also establishes that Whanganui Māori land interests were carved out of the Rohe Tapu at Kōkako and that ultimately Kōkako was about preserving the Rohe Tapu for hapū and iwi opposed to land sales and who wished to assert their tino rangatiratanga.<sup>46</sup>

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<sup>42</sup> Ballara, A., *Tribal Landscape Overview, c 1800-c.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts*, Wai 903, #A40, at 443.

<sup>43</sup> Ballara, A., *Tribal Landscape Overview, c 1800-c.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts*, Wai 903, #A40, at 443.

<sup>44</sup> B Stirling, *Taihape District Nineteenth Century Overview* dated May 2016, Wai 2180, #A43, at 16-25.

<sup>45</sup> B Stirling, *Taihape District Nineteenth Century Overview* dated May 2016, Wai 2180, #A43, at 16-17.

<sup>46</sup> Ballara, A., *Tribal Landscape Overview, c 1800-c.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts*, Wai 903, #A40, at 444.

The meeting was to lay down the boundary line of the land belonging to the Whanganui people. The line was laid down because N'Apa were selling their lands – also N'Raukawa N'Te Upokoiri & N'Kahungunu & because some of N'Whiti & N'Tama had intermingled with the N'Kahungnu & N'Te Upokoiri in agreeing to sell land and because the Tuwharetoa were joining to the King.

29. Before the Native Land Court in 1881, Horonuku Te Heuheu Tūkino explained that Kōkako was convened to hold the land and to prevent the land from being leased or sold. The boundary that was laid down commenced at Rangipō, it ran along the Moawhango river to the Rangitīkei, along that river to Te Houhou and then to the Whanganui River.<sup>47</sup>
30. Prior to Kōkako, there is no evidence to suggest that the Rohe Tapu boundary that was set at Pūkawa had changed. What we do know is that instead of being at the Rangitīkei River mouth by hui's end, the southern boundary was at Te Houhou when all was said and done. After much deliberation, boundary korero and discussion about Crown purchases in the region, the adjustment that Ngāti Apa and Whanganui Māori sought so that they could sell their land was allowed. Their lands were extracted from the Rohe Tapu. Instead of the Rohe Tapu boundary running from Waitōtara, to Whanganui (river mouth), to Rangitīkei (river mouth) and then to Tītīōkura, as it did in 1856, it was adjusted to run from Waitōtara south to Kaiwhaiki on the Whanganui River and then to Te Houhou on the Rangitikei River.<sup>48</sup> Te Houhou was, of course, where the pou was set to ward McLean off from coming any further inland with the Rangitikei-Turakina purchase.
31. The ample record that Te Houhou had become the new southern boundary confirms the involvement of Mōkai-Pātea Māori at Pukawa and, more

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<sup>47</sup> Ballara, A., *Tribal Landscape Overview, c 1800-c.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts*, Wai 903, #A40, at 445.

<sup>48</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 21; Ballara, A., *Tribal Landscape Overview, c 1800-c.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts*, Wai 903, #A40, at 443; Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 20. Stirling drew on the evidence of Te Keepa Te Rangihiwini for the Te Houhou boundary marker. It should be noted that Te Keepa also stated that the southern-most boundary marker went to Huriwaka. Whether the boundary is at Te Houhou or Huriwaka, most if not all of the Mokai-Patea remained in the Rohe Tapu. In any event, there were numerous affirmations that the southern boundary marker was at Te Houhou. These affirmations are listed above.

importantly, it confirms that the entire district was under the mana of the king. Both Ratima Te Aoterangi<sup>49</sup> and Hiraka Te Rango<sup>50</sup> gave evidence before the Native Land Court that the southern boundary was at Te Houhou. In a letter to *Te Wananga* dated 4 September 1875, Renata Kawepo rendered the southern boundary at Te Houhou,<sup>51</sup> as did Winiata Te Whaaro<sup>52</sup> and Horonuku Te Heuheu Tūkino.<sup>53</sup>

### *Addressing the Crown closing*

32. In support of its statement that Kōkako was more about defining boundaries than it was about the Kīngitanga,<sup>54</sup> the Crown cited Pīkirangi's Native Land Court evidence concerning Te Oti Pohe's non-seller stance at Kōkako and Te Oti's role in calling the hui. Notably however, Pīkirangi said nothing about boundaries in particular. Pīkirangi's evidence does not support the Crown assertion that Kōkako was about boundaries and not about the Kīngitanga. If anything, his evidence affirmed that Kōkako was about the Kīngitanga given the synergy between Te Oti's strong non-seller stance, which Pīkirangi described, and that of the Kīngitanga. The Crown cited Anaru Te Wanikau's Native Land Court evidence in support of its claim regarding Kōkako's boundary-related purpose. Te Wanikau said nothing about boundaries. He stated that Kōkako "was held to protest against sales of land . . .",<sup>55</sup> which, again, was a Kīngitanga *take*.
33. The Crown stated at paragraph 37 that "[t]here seem various related but not always consistent narratives: one that emphasised the effort of Whanganui rangatira to retain the mana of their lands and not place them under the tapu or

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<sup>49</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 21.

<sup>50</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 23.

<sup>51</sup> Renata Kawepo letter, *Te Wananga*, 4 September 1875, at 195, cited in Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 24.

<sup>52</sup> Winiata Te Whaaro, Mangaōhāne Rehearing 1890, N20/376, cited in Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 385.

<sup>53</sup> Te Heuheu, Rangipō-Waiū 1881, TMB 2/95-6, Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 385.

<sup>54</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [34].

<sup>55</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [35].

mana of the Kīngitanga”.<sup>56</sup> The effort of Whanganui rangatira to retain the mana of their lands is not seen by the Crown in the right context. The boundary adjustment needed to be discussed and agreed to. This activity took some time to complete but eventually it was done. According to Stirling:<sup>57</sup>

What emerged from Kōkako was not only the laying down of a boundary for the Whanganui and other tribes, but also the laying down of a boundary for those pledging allegiance to Kīngitanga and wishing to place their lands under its protection.

34. The Crown makes the observation that for Taihape Māori, Kōkako was more about defining their southern boundaries, other tribes’ assertions of customary interests and earlier Crown purchasing activity such as the Rangitīkei-Turakina purchase than it was about the Kīngitanga.<sup>58</sup> Again, the Crown is not seeing events in the right context. As discussed above, the need for Taihape Māori to define their southern boundary with their various neighbours such as the Whanganui people, Ngāti Apa and others, arose out of the desire of Whanganui Māori and others such as Ngāti Apa to move the Rohe Tapu’s southern boundary marker from the mouth of the Rangitīkei River north so that land in that region that these iwi wished to sell could be sold.<sup>59</sup> This is the reason why there was so much boundary talk and why there was so much talk about the southern boundary in particular.
35. One of the factors that was complicating the discussions was the clash that occurred in 1849 and into 1850 between Taihape Māori on the one hand and Ngāti Apa and Ngāti Raukawa on the other over the Rangitīkei-Turakina Crown purchase boundary. Donald McLean met with the groups in 1850 and this resulted in the establishment of the boundary at Te Houhou. These events are set out in the Claimants’ constitutional issues closing.<sup>60</sup> This explains why the

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<sup>56</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [37].

<sup>57</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 19.

<sup>58</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [34].

<sup>59</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 21, per Te Keepa Te Rangihwinui to Native Minister Bryce in 1880. The boundary went south from Kaiwhaiki to Te Houhou.

<sup>60</sup> *Generic Constitutional Issues Closing Submissions* dated 12 October 2020, Wai 2180, #3.3.54(b), at [304] to [310].

Rangitīkei-Turakina purchase was a topic for discussion at Kōkako. This rendering of events at Kōkako also explains why Taihape Māori had to deal with “assertions of customary interests” by other iwi at Kōkako. Furthermore, and as discussed, the original Rohe Tapu boundary ran south from the Whanganui River mouth to the Rangitīkei river mouth and from there to Tītīōkura. The 225,000-acre Rangitīkei-Turakina block was purchased by the Crown in 1849. The Rohe Tapu boundary would have included this area of Crown land. It is submitted that the inclusion of the block in the original Rohe Tapu boundary was one of the reasons why the boundary adjustment was sought. The boundary adjustment south from Waitōtara to Kaiwhaiki and then to Te Houhou would have resulted in the removal of the block from the Rohe Tapu.

36. The Crown pondered why the Whanganui Crown purchase of 1848 was discussed at Kōkako.<sup>61</sup> Due to its being discussed, the Crown has difficulty with following the narrative at Kōkako and this in turn caused the Crown to conclude in error that the hui was not about the Kīngitanga, when it was. As discussed, the Rohe Tapu boundary originally travelled south from Waitōtara, to Whanganui (river mouth), to Rangitīkei (river mouth) and then to Tītīōkura. This can be worked out from the Rohe Tapu boundary that Richard Taylor provided and that Walzl recorded in his Tribal Landscape Overview.<sup>62</sup> Instead of the Rohe Tapu boundary running south from Waitōtara to the Whanganui river mouth and then to the Rangitīkei river mouth, Te Keepa explained to Native Minister Bryce in 1880 that Whanganui Māori wanted the Rohe Tapu boundary to head south from Waitōtara through Kaiwhaiki on the Whanganui River, “just up the Whanganui river from the 1848 Whanganui Crown purchase”,<sup>63</sup> and then to Te Houhou. Kaiwhaiki was chosen as the new Whanganui River boundary marker because it was outside of the 1848 Whanganui Crown purchase area. Due to the Kaiwhaiki adjustment to the Rohe Tapu boundary, the 1848 Whanganui Crown purchase came up for discussion at Kōkako.

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<sup>61</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [32].

<sup>62</sup> Richard Taylor, Journals, 14 December 1856, cited in Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 379.

<sup>63</sup> Stirling, B., *Taihapa District Nineteenth Century Overview*, Wai 2180, at 21, per Te Keepa Te Rangihiwini to Native Minister Bryce in 1880.



37. According to the Crown, another “prominent strand emphasised Taihape Māori efforts to prevent land sale by groups to the south and south-west, including defining their tribal boundaries by setting up pou”.<sup>64</sup> Essentially, this is a non-seller narrative. It is consistent with the Native Land Court evidence of Pikirangi and Te Wanikau that was discussed earlier where, for instance, Pikirangi talked about Te Oti Pohe’s non-seller stance. Te Oti is credited by some with having had a hand in convening Kōkako.<sup>65</sup> If that is so, the hui was always going to be about not selling the land, as was Pukawa. It is not understood why the Crown has difficulty with placing this “prominent strand” about non-seller Taihape Māori within Kōkako’s predominant purpose—pupuri whenua.

### **Maintenance and oppression of tino rangatiratanga**

#### *Runanga and komiti*

43. The Crown referred to the village level rūnanga and komiti that were formed to dispense “[v]arious codes of law (ture)”.<sup>66</sup> The capacity to make law was an important component in Te Paparahi o Te Raki Tribunal’s sovereignty definition.<sup>67</sup> The Crown’s acknowledgement of that continued capacity goes against the establishment of legal sovereignty in 1840 by the Crown since, according to Dr McHugh and as discussed previously, “there can be only one sovereign”.<sup>68</sup> If there are two law-making entities within the same territorial bounds, in accordance with British constitutional law neither can be sovereign. With that having been said, a strict application of British constitutional law is inappropriate in Aotearoa anyway. Kāwanatanga and tino rangatiratanga can both exist at law here if that is in accordance with tikanga Māori.<sup>69</sup> The fact that rūnanga and komiti were dispensing law at the same time that the Crown was

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<sup>64</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [37].

<sup>65</sup> Te Hau Paimarire, 10 May 1881, Taupo MB 2, at 179, cited in Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 17. Walzl also records attribution to Te Oti Pohe convening Kōkako by Te Hau Paimarire, Winiata Te Pūhaki of Ngāti Rangī and Ihakara Te Raro—see Walzl, T., *Tribal Landscape Overview*, Wai 2180, #A12, at 382.

<sup>66</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [43].

<sup>67</sup> Waitangi Tribunal, *He Whakaputanga me te Tiriti ō Waitangi—The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Wai 1040, at 9.

<sup>68</sup> Waitangi Tribunal, *Hearing Week 4 Transcript*, Wai 1040, #4.1.4, page 534, lines 39-44 and page 535, lines 1-13.

<sup>69</sup> *Generic Reply Submissions for Issue 1: Tino Rangatiratanga* dated 29 September 2021, at [56].

dispensing law pursuant to its kāwanatanga means that the operation of dual or even plural sovereign entities within the same territory is in accordance with tikanga Māori.

44. Many Kīngitanga hapū took the initiative of forming their own rūnanga or komiti. So, as opposed to merely being an administrative function, the formation of rūnanga and komiti was an expression of sovereignty.
45. Although the rūnanga and komiti may have been sovereign at law, their judgments and other legal decision-making had no impact on land dealings or land titles.<sup>70</sup> According to Stirling, the demise of the Kīngitanga allowed the Crown to ignore komiti Māori in the Mōkai-Pātea:<sup>71</sup>
  - a. And once they had won the wars they said well we don't need all these . . . new institutions. We don't need to placate these Māori anymore because we've beaten them.

The Crown's mistreatment of the rūnanga and komiti constituted a violation of the Claimants' tino rangatiratanga.

#### *Ngāti Hokohē*

47. Although the Crown referred to “**responses** to the concerns and allegations of the Repudiation Movement,<sup>72</sup> in fact, only **a response** was cited—the Hawkes Bay Native Lands Alienation Commission. The Commissions did little to alleviate the heart-felt frustrations of the movements' proponents.
47. Despite the numerous Parliamentary petitions and other complaints, according to Stirling, “[t]he result was nought”.<sup>73</sup> In circumstances where Taihape Māori were politically marginalised, financially decrepit and without any legal recourse for the curing of their many ills, there was no compulsion on the Crown to provide any remedies. In fact, Taihape Māori were so weakened by this time

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<sup>70</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 28.

<sup>71</sup> Waitangi Tribunal, *Hearing Week 3 Transcript*, Wai 2180, #4.1.10, at 514, lines 30-31, at 515, lines 1-2.

<sup>72</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [51].

<sup>73</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 238.

that the Crown could do what it liked. In these circumstances, a sufficient tactic for suppressing Mōkai-Pātea Māori was simply to ignore them.

48. At its core, Ngāti Hokohē was a sovereignty movement; an expression of tino rangatiratanga. The hui agenda at Pākowhai in 1876 included the following item—“A Parliament for the Māori people should be held to organise their country”.<sup>74</sup> It sought the abolition of the Native Land Court and cancellation of the Māori Parliamentary seats. It was the progenitor of Kōtahitanga.<sup>75</sup> The allegiance that was given to Queen Victoria in the August 1876 petition cited by the Crown in its closing submissions<sup>76</sup> should be seen in the context of Ngāti Hokohē’s sovereignty-based activities and aspirations. In this regard, it is significant that a Paremata Māori was discussed at an important held hui at Ōmahu just a few months after the 1876 petition and the giving of allegiance.<sup>77</sup> Evidently, swearing allegiance to the Queen was not seen by Ngāti Hokohē as being inconsistent with the maintenance of tino rangatiratanga manifested in the form of a Paremata Māori. And, as discussed, neither is it inconsistent with tikanga Māori and its accommodation of kāwanatanga and tino rangatiratanga. The swearing of allegiance to the Queen did not nullify the petitioners’ tino rangatiratanga.
49. Furthermore, in that day and age, the Crown remained particularly concerned with regional security. The giving of oaths of allegiance by Māori to the Queen was a security measure that featured in the engagement between the Crown and Māori during the New Zealand Wars and for many years thereafter. For instance, the Native Committees Act 1883 allowed for the constitution of Native Committees. Unless committee members swore an oath of allegiance to the Queen, they could not sit.<sup>78</sup> Although the Crown did not direct the petitioners of 1876 to give their allegiance to the Queen, the giving of allegiance had become a procedural requirement that had to be complied with when engaging with Crown officials, especially if a request was being made of the Crown. In

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<sup>74</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 245.

<sup>75</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 245.

<sup>76</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [58].

<sup>77</sup> Stirling, B., *Taihape District Nineteenth Century Overview*, Wai 2180, at 244.

<sup>78</sup> Marr, C., *Te Rohe Pōtae Political Engagement 1864 – 1886*, Wai 898, #A78, at 892.

this sense, the allegiance requirement was a form of coercion. Its requirement caused the Crown to engage in oppressive conduct.

### **Autonomous district**

50. At paragraph 71 of the Crown closing, it is stated that there “has been no evidence of any attempts by Taihape Māori in the 19<sup>th</sup> century to construct or attempt to construct an autonomous district within the region”.<sup>79</sup>

51. In the Claimants’ constitutional issues closing, evidence was provided of the inclusion of the Mōkai-Pātea in the Kīngitanga’s Rohe Tapu.<sup>80</sup> With that, an autonomous district was created. More evidence of inclusion in the Rohe Tapu was set out in the Claimants’ constitutional issues closing.<sup>81</sup>

### **Conclusion**

52. The political engagement between the Crown and Taihape Māori of the mid-to-late 19<sup>th</sup> century has two marked themes. One is the continued preservation of their tino rangatiratanga by Taihape Māori and the other is the Crown’s incessant thwarting of it. By its own admission the Crown ignored the guarantee of tino rangatiratanga in te Tiriti ō Waitangi and thus the principles of te Tiriti ō Waitangi were breached. The Crown’s active and sometimes passive nullification of the Claimants’ sovereignty delegitimised the Crown’s eventual acquisition of *de facto* sovereignty.

**DATED at Auckland this 1st day of October 2021**



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Darrell Naden  
**Counsel Acting**

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<sup>79</sup> Crown Law, *Crown Closing Submissions in relation to Issue 2: Political Engagement* dated 21 May 2021, Wai 2180, #3.3.90 at [71].

<sup>80</sup> *Generic Reply Submissions for Issue 1: Tino Rangatiratanga* dated 29 September 2021, at [3] to [5].

<sup>81</sup> *Generic Constitutional Issues Closing Submissions* dated 12 October 2020, Wai 2180, #3.3.54(b), at [299] to [346].