In the Waitangi Tribunal
Taihape: Rangitīkei ki Rangipō District Inquiry

Wai 2180
Wai 378
Wai 382
Wai 400

In the Matter	of the Treaty of Waitangi Act 1975
And	
In the Matter	of the Rangitīkei ki Rangipō District Inquiry (Wai 2180)
And	
In the Matter	of a claim by Wero Karena on behalf of himself and those Māori who were owners of Ōwhāoko C3B prior to 1967 (Wai 378)
And	
In the Matter	of a claim by Wero Karena on behalf of himself and the Trustees of the Ōwhāoko C7 Trust and Ngāti Hinemanu, Ngāti Te Upokoiri and the hapu of Ngāti Kahungunu (Wai 382)
And	
In the Matter	of a claim by the late Ranui Toatoa, Rhonda Toatoa and Greg Toatoa and Wero Karena on behalf of Nga Hapu o Heretaunga ki Ahuriri (Wai 400)

Submissions in response to Crown Closing Submissions on behalf of Wai 378, 382, 400

Dated 27 September 2021

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Waitangi Tribunal
27 Sept 2021
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Introduction

1. These reply submissions in response to the Crown's closing submissions are filed on half of:

    a. **Wai 378** – a claim by Wero Karena on behalf of himself and those Māori who were owners of Ōwhāoko C3B prior to 1967;

    b. **Wai 382** – a claim by Wero Karena on behalf of himself and the Trustees of the Ōwhāoko C7 Trust and Ngāti Hinemanu, Ngāti Te Upokoiri and the hapu of Ngāti Kahungunu; and

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

2. The Claimants adopt the Generic Submissions in Reply to the Closing Submissions of the Crown insofar as they relate to the claims and issues raised by the Claimants.

Replies to Crown Closing Submissions

3. In these submissions, the claimants provide specific responses on behalf of Wai 378, 382, and 400 to the Crown's closing submissions.

4. In particular, these reply submissions will address:

    a. the lack of Crown response to the claimant's statement of claim, closing submissions, and other evidence; and
    b. the Crown's additional submissions on Ōwhāoko C3B which were filed after Hearing Week 16.

Twentieth Century Land Alienation

Ōwhāoko C6

5. The Crown has not addressed the claimants' concerns regarding the Crown's purchasing of Ōwhāoko C6 in the twentieth century. The claimants allege that the "Crown picked off land interests in Ōwhāoko C6 in a coercive way and for an inadequate price."[1]

6. The Crown mentions that it purchased 12,849 acres of land in Ōwhāoko in the twentieth century,[2] but denies that it had any sort of plan,[3] and in fact states that it did not want to buy Ōwhāoko land:[4]

> *The predominant story of Crown purchasing in Ōwhāoko is, in fact, that of it choosing not to purchase. Repeated offers of land were made to the Crown for sections in Ōwhāoko. The Crown had valuations undertaken and, most of the time, the gap between what the sellers wanted and the Crown valuation was wider than the Crown was willing to bridge.*

7. The Crown then further states that "[no] substantive issues result from the evidence concerning 20th century Crown purchasing activity."[5]

8. The claimants submit that this is a careless characterisation. To the claimants who have lost their land, these are substantive issues, as they have been left in the largely landless and impoverished position they are in today, as the result of Crown actions, including Crown purchasing activity.

Timahanga

9. In relation to Crown purchasing in Timahanga, the Crown states that:[6]

> *No issues are raised in the Timihanga [sic] evidence about the fairness of prices being offered, survey costs, or the process undertaken. The Crown*

[1] Wai 2180 1.2.10 at [9.8]
[2] Wai 2180, #3.3.81 at [105].
[3] At [103].
[4] At [105.2].
[5] At [107].
[6] Wai 2180, #3.3.81 at [105.1].

> *initiated these purchases, hui of all owners were called by the Native Trustee, the Crown's proposal (based on formal valuation) was presented and accepted. One hui was rescheduled after a quorum was not achieved at the first hui.*

10. Further, it states that the "only issue raised in the evidence on Crown purchasing in Timahanga relates to the 1,772 acres Timahanga 5 block."[7]

11. This is not correct as the claimants have raised issues to do with the purchasing of Timahanga 2 and 6, which were purchased by the Crown in 1911:[8]

    (a) *The aggressive purchasing of almost 90% of Timahanga lands inthe short space of four years, very soon after title to Timahanga was awarded through the Native Land Court, was a breach of theCrown's duty to protect the Claimants' tino rangatiratanga over their lands.*

    (b) *Agreement of the Māori landowners to sell Timahanga 2 and 6 was secured by the Crown without providing the owners with a proper valuation of the blocks – a breach of the duty of the Crown to act fairly and reasonably towards the Claimants.*

12. The Crown has simply chosen not to respond to the claimants' allegations about Timahanga 2 and 6.[9]

Environment

13. The Crown has not responded to the claimants' submissions that environmental damage done to the Ngaruroro Catchment inside the Taihape Inquiry District is a substantial cause of the reduced flow of the Ngaruroro River, which in turn, contributes to local marae often running out of water.[10] Meanwhile, the upstream farmers still draw large quantities of water from it.

[7] At Footnote 154.
[8] Wai 2180, #1.2.10, at [9.15].
[9] At [9.11-9.15].
[10] Wai 2180, #1.2.7, at [9].

14. The Crown has generally attempted to divorce itself from responsibility for environmental degradation by stating that "the Crown is usually not responsible for carrying out the physical activities that might adversely affect a waterway."[11] It confirms that its "responsibility is typically for policies or legislation that permit activities to occur," which in the claimants' opinion, is splitting hairs.

15. The claimants ask, who, if not the Crown, has the ability to control or influence the pollution and degradation of waterways? In the opening paragraphs of its submissions on Environment (Waterways), the Crown claims kāwanatanga over the waterways, yet later states that it cannot be held to account for the condition of the waterways. The Crown wants all the benefits of use and access to water, without any of the responsibility which comes with it. The individuals carrying out the activities which harm waterways are doing so because the Crown's policies and legislation permit these activities to occur.

16. On the state of the upper Ngaruroro catchment specifically, the Crown stated that it "is affected by a wide range of factors, not all of which the Crown can control or influence."[12] As stated, the Crown has control over a large proportion of the factors affecting waterways and the upper Ngaruroro catchment, because, as admitted, it at least has responsibility for "policies or legislation that permit activities to occur". Beyond this, the Crown has been involved in development activities of its own which affect waterways.

17. In regards to the water running to the Marae, the claimants submit that, the Crown should take particular interest in the supply of water, firstly because it has a responsibility provide its citizens with clean drinking water, and secondly, local bodies charge rates which should include the provision of water, and as evidenced in this inquiry and others, Māori have routinely lost land for non-payment of rates. Māori should at least receive the benefit of the rates that they are obliged to pay as a matter of natural justice, but also

[11] Wai 2180, #3.3.93, at [69].
[12] At [67].

because they, as a general situation, have lost so much because of rating regimes.

18. The Crown seeks to avoid any direct responsibility for activities that adversely affect a waterway. In the one paragraph, the Crown acknowledges that the Hawkes Bay Acclimatisation Society released brown trout into the Ngaruroro River in the late 1870s,[13] then immediately afterwards states that "the Crown is usually not responsible for carrying out the physical activities that might adversely affect a waterway."[14] The Crown acknowledges that its "responsibility is typically for policies or legislation that permit activities to occur." But also states that the "state of the upper Ngaruroro catchment is affected by a wide range of factors, not all of which the Crown can control or influence."[15]

19. The Crown points to culling deer as an anti-erosion measure,[16] but fails to mention that the Crown actually aided in the introduction of deer.[17] The Crown congratulates itself for helping to fix a problem it had a part in creating.

Effect of pollution, sedimentation, flood control measures, gravel extraction and habitat destruction on indigenous species

20. The Crown submits that regimes that enabled activities such as the draining of wetlands, "were a legitimate exercise of the Crown's kāwanatanga right, it also recognises that such activities sometimes damaged resources considered to be a taonga by Taihape Māori."[18]

21. The claimants submit that it cannot be a legitimate exercise of the Crown's kāwanatanga right when it damages taonga. And of course, it is not just an intangible taonga-ness that is lost. The Crown was taking away the

[13] At [68].
[14] At [69].
[15] At [67].
[16] At [70.2].
[17] Wai 2180, #A45, at [7].
[18] Wai 2180, #3.3.93, at [133].

livelihoods and ability to sustain themselves of entire Māori groupings who relied on those wetlands as their baskets for food and other supplies. There may be a property rights argument around that situation, but demonstrably physical harm occurred and it was destructive of Māori communities' ability to exist in accordance with their own traditional rights and social preferences.

22. The Crown again claims that a "wide range of interrelated factors affecting fisheries makes it difficult to determine the causes of particular negative environmental impacts and, in particular, it is difficult to attribute responsibility for those causes to the Crown."[19]

23. To this, the claimants say that it appears as though the Crown is on one hand saying that it is allowed to do whatever it wants because of kāwanatanga, but also that it cannot be blamed for the effect of those actions. The claimants also say once again that the more particularised each case is the more the causes and their responsibility can be determined. And the claimants have given many particular examples.

Native Land Legislation

24. The Crown did not respond to the claimants' allegations about s 343 of the Native Land Act 1909, or their example of Arthur Boyd's failed attempt to buy Ōwhāoko C3 in 1916.[20]

25. The Crown has also not responded to the claimants' allegations pertaining to the Māori Affairs Act 1953, or the examples used to demonstrate its effects, i.e. the purchase of Ōwhāoko C3A, and the failed sale of Ōwhāoko C7.[21]

26. As stated by the claimants in their statement of claim:[22]

> *The Crown, in breach of its duty to protect the tino rangatiratanga of the Claimants over their lands, enacted the Māori Affairs Act 1953 and other*

[19] At [134].
[20] Wai 2180, #1.2.10, at [10.2-10.5].
[21] At [10.6 – 10.7].
[22] At [10.1].

> *significant Native Land legislation which provided little protection to Māori land owners wishing to remain in possession of their land.*

Local Government

27. The Crown has not responded to the claimants' allegations on the imposition of Rabbit Board charges on the claimants' lands, causing financial hardship.[23]

28. In fact, it has not addressed Rabbit Boards at all in its closing submissions.

29. As stated by the claimants in their statement of claim:[24]

> *The Crown imposed charges on the Claimants to pay for the eradication of rabbits on their lands, regardless of the fact that they were not responsible for the introduction of rabbits to the district. This was a breach of the Crown's duty to treat the Claimants fairly and reasonably.*

Te Koau

30. The Crown accepted that it did not acquire title in Te Koau, and that it was wrongly included in the Otaranga purchase.[25]

31. However, it has not responded to a number of other allegations made by the claimants about Te Koau.

32. The Crown did not respond to the allegations that:
    a. there is no record of the owners being paid their compensation, or the allegation that the amount of compensation (2s 6d per acre) was severely inadequate.[26]
    b. it facilitated the sale of Te Koau B by way of the Native Land Act 1909 inadequacy to protect the claimants' tino rangatiratanga over their land, and other means.[27]

[23] At [14.1-14.7].
[24] At [14.1].
[25] Wai 2180, #3.3.78, at [183-188].
[26] Wai 2180, #1.2.10, at [26.6].
[27] At [27.5].

c. it failed to assist the claimants to develop Te Koau A.[28] After the sale of Te Koau B, the claimants were left with Te Koau A, arguably the most difficult part of the block from which to derive an income.

Ōwhāoko C3B

Rating

33. The Crown admitted that survey charges carried by Ōwhāoko C3B (approximately £486 (or $972), not accounting for interest, amounting to 27% of the $3,600 sale figure) was an excessively high rate of survey charges.[29]

34. The Crown further stated:[30]

> *this level of survey costs probably did constitute a burden on the owners of the block that significantly impacted upon the ability of the owners to develop the land and free the block from this debt.* ***Without knowing more about the particular circumstances of the sale, however, it is difficult to be definitive.***

35. The qualification emphasised above is a niggardly stance – the Crown has admitted that the rates are excessively high. Unless the sellers had a spare $1668.69 ($1225.36 in rates plus 443.53 in survey charges) - and in 1960s currency no less - it would have been near impossible for them to come up with the money unless they sold the block.

36. The claimants note in their statement of claim that the debt was a major factor in the owners' decision to sell Ōwhāoko C3B.[31] The rates had previously been much higher - $1225.36, plus 443.53 in survey charges. The rates were only reduced to $418 after the sale, having been negotiated downwards by the Māori Trustee. So at the time the owners agreed to sell, they had $1668.89 owing (survey charges plus rates). This would have even further (in the Crown's words) constituted "a burden on the owners of the

[28] At [28].
[29] Wai 2180, #3.3.81, at [176.3-176.4]
[30] At [177].
[31] Wai 2180, #1.2.10, at [17.2]

block that significantly impacted upon the ability of the owners to develop the land and free the block from this debt."[32]

Failure of Crown to facilitate an appeal

37. The Crown has not responded to the claimants' allegations that the Crown failed to advise the owners of Ōwhāoko C3B of their right to appeal the Māori Land Court confirmation order of Ōwhāoko C3B.[33]

Ōwhāoko Development Scheme

38. While the sale of Ōwhāoko C3B was being facilitated, the Department of Māori Affairs was investigating the possibility of using Ōwhāoko C3B as part of a development scheme.

39. The claimants stated that "[i]t was the duty of the Crown to adequately explore this option with the Claimants, and to protect their tino rangatiratanga over Ōwhāoko C3B while this was exploration was taking place."

40. The Crown has not responded to this allegation.

Māori Land Court failure to consider undue aggregation

41. The Crown did not respond to the claimants' allegation that the Māori Land Court failed to consider undue aggregation.

42. The Court did not revisit the initial decision to confirm the resolution of owners to sell on 6 February 1968, after it was discovered that no declaration under rule 94(4)(d) of the Māori Land Court Rules 1958 had been filed.

43. There was no statutory remedy in place that the claimants could realistically take advantage of, and the Crown's failure to provide one contributed directly to the Claimants' loss of Ōwhāoko C3B.

[32] Wai 2180, #3.3.81, at [177].
[33] [20.1 – 20.7]

Ōwhāoko C3B – additional submissions

44. The claimants also take this opportunity to respond to the Crown's additional submissions on Ōwhāoko C3B, which were filed on 13 September 2021, in response to directions following Hearing Week 16.[34]

45. As described in the Crown's submissions, during Hearing 16:[35]

> *Dr Hamer noted that the Crown had not engaged with the allegations that the owners of Ōwhāoko C3B were misled about the value of the millable timber or that Chief Judge Durie later cancelled the order confirming the sale.*

Valuation

46. In its additional submissions on Ōwhāoko C3B, the Crown states that it has not researched further documentation on the valuation process, and that there is "an evidential gap which is material to the allegations made of Treaty breach arising from the valuation process."[36]

47. The claimants submit that the Crown has had notice of their allegations pertaining to Ōwhāoko C3B since August 2016 when the claimants filed their Statement of Claim. At which point – if the Crown considered there to be an evidential gap which would affect its assessment of the Treaty breaches – it should have investigated its past actions through the Valuation Department.

48. The questions posed by the Tribunal to the Crown in August 2021 come exactly five years later. The Crown cannot seek to avoid an examination of its own actions by stating that it has not researched further documentation on the valuation process.

49. The Crown acknowledges that:[37]

[34] Wai 2180, #3.2.899, responding to Wai 2180, # 2.6.129, Directions of Judge L R Harvey Post Hearing 16, dated 31 August 2021.
[35] Wai 2180, #3.2.899, at [28].
[36] At [34].
[37] At [36].

> *its 1967 valuation of Ōwhāoko C3B made no reference to the existence of millable timber on the block, that this was an error, and that a substantial volume of timber was in fact removed from the block soon after.*

50. However, the Crown's following submissions on the topic of the valuation appear to accept no responsibility for this error, and seek to make any and all excuses as to why a Crown entity, such as the Valuation Department, did not perform an accurate assessment of the timber on Ōwhāoko C3B.

51. The Crown stated that there is no evidence that the Commissioner of Crown Lands knew about the millable timber prior to the valuation. The claimants submit that several Pākehā with positions within the government knew about the existence of millable timber in the Ōwhāoko area, including Prime Minister William Massey, and employees of the New Zealand Forestry Service and the Native Department.

52. The Crown states that the Forest Department informing Mr Mathews that "the 'timber potential' of Ōwhāoko C3B was limited to 'post and batten at the present moment, as there is no roading into the area'", is "not clearly inconsistent with the valuation assessment of no value for the timber being recorded on the valuation."[38]

53. The claimants do not see how the Crown reached this conclusion. It appears to conflict with the Crown's later assertions that access difficulties made valuation difficult. Further, timber of low value is not the same as timber of no value.

54. The Crown cannot argue both that the Crown knew that there was timber, and made an informed decision not to include it in its valuation assessment because there was no roading to the area, and also that its difficult terrain "may have made it logistically difficult for the valuer to conduct a complete

[38] At [38].

inspection or to identify all millable timber on the block."[39]

55. The Crown acknowledges that it is not clear "what value would have been understood to be derived from timber suitable only for post and battens and/or how post and battens were or were not considered to constitute millable timber (or the value of such)."[40] Again, it is submitted that low value does not equal no value.

56. The claimants submit that the Crown should have informed itself of the value of these matters before concluding that:
    a. The Crown was being transparent with Mr Mathews;
    b. This is not inconsistent with the valuation assessment.

57. The claimants do not agree with the Crown's characterisation of its communication with Mr Mathews, i.e. that it "demonstrates transparency between the Crown officials and Mr Matthews [sic]" and "there does not appear to be any deliberate attempt to mislead him."[41]

58. The claimants submit that if the Crown was being "transparent" with Mr Mathews, it would have told him then what the Crown is now trying to argue in its additional submissions on Ōwhāoko C3B, either that:

    a. The Crown recognises that there may be millable timber on the block, but the current state of its access meant that they were not taking the value of the timber into account; or
    b. They have not been able to make a full assessment of the timber potential because of access issues.

59. The Tribunal will be aware that this issue of the non-valuation of millable timber was a chronic one, causing problems around the motu for a century by the time this incident occurred. Investigations such as the Stout-Ngata Commission in 1907-08 had condemned the widespread practice by

[39] At [44].
[40] At [38].
[41] At [38].

government valuers and valuers-general over the decades had had to instruct their staff not to overlook the rich resource. Accordingly, it is further submitted that it was a potential problem that professional valuers in the 1960s ought to have been well aware of and taking active steps to avoid. Possible lack of access may have been plausible in the 1860s, but not in the 1960s when even the claimant was flying over these lands in helicopters and Aotearoa had been thoroughly surveyed and detailed topographical maps produced down to at least inch to mile detail at a minimum.

60. The Crown stated that "Mr Matthew's most direct statements concerning prior knowledge refer to the knowledge of private parties, not of Crown agents."[42] It is submitted that this was not secret knowledge. The evidence indicates that almost literally everyone in the community was aware of the timber on the blocks or thereabouts, and it therefore strains credulity to argue that private parties in the community knew of it but Crown agents living and working in and drawn from the same community did not.

61. The claimants strongly disagree with the Crown's conclusion that there is not a clear Treaty breach.[43] At the very least, the Crown were negligent, so as to cost the Māori owners tens of thousands of dollars of value for the land. If the valuation had been correct the owners could have sold at a much higher price or harvested the timber for themselves. At the most, the Crown deliberately lied or obfuscated the truth - likely because government departments were (and continue to be) wilfully ignorant of local Māori knowledge, and/or dismissive of Māori business acumen, and believe that Pākehā are better at exploiting economic opportunities.

62. The Crown claims that:[44]

> *Crown officials appear to have viewed access difficulties as being a material aspect in their assessment that the timber did not warrant being calculated within the valuation itself (ie costs of extraction*

[42] At [39].
[43] At [40].
[44] At [41].

> *without access was assessed as negating any value the timber may have held).*

63. The claimants submit that there is no evidence that the Crown did such a calculation. To be able to reach a zero-sum conclusion, the Crown would have had to understand the value of the timber on the block (which the Crown claims in its submissions that it did not) and then calculate the costs of extraction, in order to come to an assessment that they should not include timber value on the valuation assessment. The claimants also submit that this goes against the Crowns claims of "transparency". If the Crown had performed such a calculation and come to the informed conclusion that the cost of extraction negated the price of the timber, this should have been told to the vendors.

64. In support of its claims of inaccessibility, the Crown points to the fact that "the owners themselves appeared not to be aware of the existence of millable timber on the block as of 1967".[45] The claimants submit that this appears to be blaming the victim. It is not the claimants' fault that they did not have legal access to their lands. As submitted in claimant closing submissions on this issue:[46]

> *The Crown is entirely responsible for lands within the Taihape Inquiry District becoming landlocked. All factors leading to landlocking were within the Crown's control, including legislation, policy, processes, a fundamental change to the land tenure system, actions, and inaction, including a framework that allowed landlocking to occur through third party actions.*

65. The Crown submits that it "recognises" that:[47]

> *the absence of legal access to Ōwhāoko C3B, together with the large size of the block (8,897 acres) and its difficult terrain, may also have*

[45] At [42].
[46] Wai 2180, 3.3.96, at [14].
[47] Wai 2180, #3.2.899, at [44].

made it logistically difficult for the valuer to conduct a complete inspection or to identify all millable timber on the block.

66. As has been accepted by the Crown in earlier submissions, "over 70% of the lands retained by Taihape Māori are landlocked."[48] If the logic espoused by the Crown is followed, this means that if Māori who owned landlocked land wanted a valuation of it, they could expect to have a sub-standard valuation because the Crown found it "difficult" to properly access their lands. Difficulty of access is not an excuse for the Crown to not perform its duties properly – Ms Woodley calculated that "52,779.96 hectares out of an estimated 72,158.12 hectares, or around 73%, of Māori land in the Inquiry District is landlocked."[49] The Crown cannot dismiss a proper valuation of all this land just because it may have found access difficult. Counsel also note that by the mid-twentieth century there were other methods of valuing property than physically standing on it and looking at it.

67. The Crown makes a claim that based on the amount of timber yield from the block in 1970 (approximately 1,620,000 superficial feet) - compared to a 1903 government report which "estimated that New Zealand forests yielded between 15,000 and 30,000 superficial feet of millable timber per acre" – this indicates "that millable timber was either concentrated in a very few small areas of Ōwhāoko C3B, or was more thinly distributed than was typical in New Zealand forests."[50]

68. The claimants submit that this is a misleading calculation. The Crown has taken the amount of timber harvested in one year (1970), and divided it by the *entire* acreage of the block. There is no evidence to suggest that this timber yield represented *all* the available timber on the block subsequent to its purchase by the Apatus.

69. The more accurate calculation would be to compare how many acres of land in Ōwhāoko C3B were *actually* felled in 1970, to the amount of superficial

[48] Wai 2180, #3.3.44, at [1].
[49] Wai 2180, #3.3.34, at [10], referring to Wai 2180, #A37(m) at 3.
[50] Wai 2180, #3.2.899, at [44].

feet of millable timber per acre harvested in that year.

70. The claimants submit the Crown's entire argument on its point is pure speculation. There is no evidence on:

a. How the block was valued;
b. If access was a problem for the valuer;
c. If the valuer thought there was a sparse amount of timber on the block; or
d. If the valuer took into account the access issues in the valuation.

71. Further, the claimants ask that that the Crown submit its calculation for converting cubic yards to superficial feet, as the claimants' calculations came up with a different amount than the Crown's (60,000 cubic yards to 1,620,000 superficial feet).

Jurisdictional matters regarding Ōwhāoko C3B and C3A

72. On this point the Crown submitted that:[51]

> *the allegations of fraud raised during proceedings in the 1960s and 1980s concerned the actions of parties other than the Crown. It is not clear to the Crown that the Tribunal has jurisdiction to make any findings on any such allegations even if evidence is supplied by Counsel for Mr Karena pursuant to the Tribunal's recent directions. Additional to the jurisdictional issues, natural justice issues would arise.*

73. Further to the above paragraph, the Crown noted on Mr Roberts specifically that "Mr Roberts is not the Crown. The Tribunal does not have jurisdiction to inquire into allegations made against him."[52]

74. In response, counsel submit that the claimants are not asking the Tribunal to

[51] At [53].
[52] At [54].

make findings of fraud by private individuals and agree that that would not be within the Tribunal's jurisdiction. Nor are the allegations ones of Tiriti breach, which is of course the Tribunal's proper jurisdiction. The allegations are, in counsels' view, part of the story of the lands concerned and the Crown's overall failure to protect the claimants in the ownership and undisturbed use and enjoyment of them in accordance with Article Two. In any case, the Tribunal has already addressed this issue and set out a method for dealing with it, beginning with the information already supplied by Mr Karena referred to above.[53]

Conclusion

75. The Crown has not made an adequate response to the topics raised in these submissions.

76. It has not responded to many claims that the claimants have brought. It has also made speculative arguments on the topic of Ōwhāoko C3B, which counsel have addressed above.

77. Where the claimant's evidence and submissions have gone unchallenged, counsels' overall submission is that the Tribunal should accept them and make findings and recommendations accordingly.

Dated at Wellington this 27th day of September 2021

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[53] Wai 2180, #2.6.130, at [4-7].