BEFORE THE WAITANGI TRIBUNAL **WAI 2180**
WAI 662
WAI 1835
WAI 1868

IN THE MATTER OF the Treaty of Waitangi Act 1975
AND
IN THE MATTER OF the Taihape Rangitīkei ki Rangipō District Inquiry

AND
IN THE MATTER OF a claim by **Peter Steedman, Herbert Steedman** and **Jordan Winiata-Haines** on behalf of themselves and the descendants of Winiata Te Whaaro and hapū of Ngāti Paki **(WAI 662)**

AND
IN THE MATTER OF a claim by **Lewis Winiata**, **Ngahapeaparatuae Roy Lomax**, **Herbert Steedman**, **Patricia Anne Te Kiriwai Cross** and **Christine Teariki** on behalf of themselves and the descendants of Ngāti Paki me Ngāti Hinemanu **(WAI 1835)**

AND
IN THE MATTER OF a claim brought by **Waina Raumaewa Hoet**, **Grace Hoet, Elizabeth Cox, Piaterihi Beatrice Munroe, Terira Vini, Rangimarie Harris** and **Frederick Hoet** on behalf of themselves, their whānau and all descendants of Raumaewa Te Rango, Whatu and Pango Raumaewa **(WAI 1868)**

SUBMISSIONS IN REPLY TO CROWN CLOSING SUBMISSIONS
Dated this 29th day of September 2021

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Table of Contents

MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

Kua haohia koe ki te kupenga a Taramainuku, ki reira noho ai tainoa ki te mahutatanga o Matariki. Tirohia ko Atutahi, ko Puanga, ko Te Ika-nui o te rangi, mā rātou e kawe nei I a koe ki tō ake Hawaiki. Kei te māreikura o te roopu whakamana I te Tiriti o Waitangi, kua roa koe e pīkau nei I ngā Kaupapa huhua o te iwi māori, tēnei tātou e poroporoaki nei I a koe, okioki atu e"

"You have been collected by the net of Taramainuku, it is there you will reside until the rising of Matariki. Look to Atutahi, to Puanga, to Te Ika-nui o te rangi, let them bear you to your ancient homeland. To you the treasured member of the Waitangi Tribunal, you who have carried the many initiatives of the Māori people, this is us bidding goodbye to you, be at peace".

1. These reply submissions are filed for and on behalf of the following claimant groups who have worked together during the hearings process under the auspices of Ngāti Hinemanu me Ngāti Paki:

    a) Wai 662; a claim brought by Peter Steedman, Jordan Winiata Haines and Herbert Winiata Steedman on behalf of themselves and the descendants of Winiata Te Whaaro and hapū of Ngāti Paki;

    b) Wai 1835; a claim brought by Lewis Winiata, Ngahapeaparatuae Roy Lomax, Herbert Winiata Steedman, Patricia Anne Te Kiriwai Cross, Christine Teariki on behalf of themselves and the descendants of Ngāti Paki me Ngāti Hinemanu; and

    c) Wai 1868; a claim brought by Waina Raumaewa Hoet, Grace Hoet, Elizabeth Cox, Piaterihi Beatrice Munroe, Terira Vini, Rangimarie Harris and Fredrick Hoet on behalf of themselves,

their whānau and all descendants of Raumaewa Te Rango, Whatu and Pango Raumaewa.

("Claimants")

GENERIC SUBMISSIONS IN REPLY

2. Counsel has prepared the below table to indicate which of the generic submissions prepared to assist the Tribunal in its deliberations have been adopted in part or in full by the claimants. We are indebted to counsel who have worked tirelessly to bring these matters to a conclusion by way of the reply submissions which have been provided.

#	Counsel	Document title	Dated
1	Tamaki Legal	Wāhi Tapu generic submissions in reply to Crown closing submissions	27 September 2021
2	Mahoney Law	Generic submissions in reply to Crown submissions on Native Land Court.	27 September 2021
3	Tamaki Legal	Generic submissions in reply to Crown closing submissions for issue 20 Te Reo Rangatira me ona Tikanga.	27 September 2021
4	Hockly	Generic submissions in reply to Crown closing submissions on Issue D Public Works Takings: General Takings (Section 13).	27 September 2021

5	Rainey Collins	Generic claimant submissions in reply to Crown closing submissions regarding education, health and other social services.	27 September 2021
6	Hockly	Generic submissions in reply to Crown closing submissions on Issue D Public Works Takings: Waiōuru Defence Lands.	27 September 2021
7	Rainey Collins	Generic claimant submissions in reply to Crown closing submissions regarding economic development and capability.	27 September 2021
8	Bennion Law	Generic submissions in reply to Crown closing submissions on local government and rating.	27 September 2021
9	Bennion Law	Generic submissions in reply to Crown closing submissions on Issue 16: Environment.	27 September 2021
10	McCaw Lewis	Generic submissions in reply to Crown closing submissions on 20th Century Land Alienation.	
11	Mark McGhie	Generic submissions in reply to Crown closing submissions on North Island main trunk railway	28 September 2021
12	Tamaki Legal	Generic submissions in reply to Crown closing submissions on	Extension sought

		Constitutional Change and Political Engagement	
13	Tamaki Legal	Generic submissions in reply to Crown closing submissions on Cultural taonga	27 September 2021

Closing Submissions on behalf of the Crown

3. The Crown's issues have rarely isolated the evidence of Ngāti Hinemanu and Ngāti Paki for comment or challenge in their closing submissions in any specific way. This is a disappointing aspect of the Crown's approach in this final phase of the hearings process.

4. It is almost as if the Crown in promoting its preference for large natural groups is determined to invisibilise the self autonomy of Ngāti Hinemanu and Ngāti Paki into the rubric of its own policy to expedite settlements to meet its own proscribed time frames. In its overview submissions the Crown says the use of the term Taihape Māori was one nominated by the Tribunal itself early in the process of hearings scheduling and for administrative convenience. While that may have been the case we are sure as claimants that the Tribunal like all of the other hapū claimants that come before it, is very aware of the Tikanga proscriptions in this regard and the importance of protection of the identity of hapū claimants which we say is a taonga protected by the very terms of Article 2 of Te Tiriti itself.

5. Ngāti Hinemanu and Ngāti Paki traditionally and in the modern context operated as an independent entity, sometimes joining neighbouring hapū and iwi for mutual defence and cooperation when confronted by external threats or when prompted by common interests. Ngāti Hinemanu and Ngāti Paki have held their lands and resources under a customary form of tenure where tribal and hapū collective ownership was paramount. In this Inquiry those relationships have expanded on occasion to include kin from Tūwharetoa; kin from Kahungunu and kin from other hapū in Mokai-Patea determined in the main by the

whakapapa connections cemented in those relationships. On other occasions Ngāti Hinemanu and Ngāti Paki have maintained their independence but always conscious of the ties that bind.

6. We wish to recall the words of Mr Jordan Haines Winiata to emphasise the point:[1]

> 30. The narrative that has been developed by the Crown has tried to limit the territorial homelands of our peoples to one side of a mountain range where in fact we are one and the same. There was no Ngāti Hinemanu ki Heretaunga or Ngāti Hinemanu ki Inland Pātea.
>
> 31. The lifeline of our whakapapa to the whenua is principally depicted, not by boundaries, but within our sacred waters that flow through the lands. These principal awa being Rangitīkei, Taruarau, Mohaka, Hautapu and Ngaruroro. All gaining their source from the Kaimanawa Ranges and surrounding Inland Pātea areas.
>
> 32. Our relationships to these lands were preserved by the guarantees in Te Tiriti o Waitangi and any attempts to manipulate or change these relationships is a denial of fundamental human rights and is a denial of who we are and where we come from.

33. We now turn the reply submissions to the claimants to the first issue in the Statement of Issues.

[1] Wai 2180, Brief of Evidence Jordan Haines Winiata dated 3 February 2020 at [30]-[32].

1. CONSTITUTIONAL AND POLITICAL ENGAGEMENT ISSUES

34. This section is in reply to the Crown closing submissions on Issue 1: Constitutional and Issue 2 political engagement issues.

Generics

35. To the extent the Generic Issues on Political Engagement have covered some of these matters off now highlighted in these submissions, those are adopted as a starting point for the observations now made for and on behalf of Ngāti Hinemanu and Ngāti Paki.

36. At paragraph [15] of its closing submissions, the Crown asserts that "when it signed Te Tiriti/the Treaty in 1840, it established a Tiriti/Treaty relationship with all Māori, including Māori from Taihape, regardless of where they lived and whether they had signed te Tiriti/the Treaty". [2]

37. The assertion is problematic in a number of ways. The Claimants do not accept the Crown had the ability to assume the relationship to be created by virtue of the signing of Te Tiriti /the Treaty at Waitangi on 6 February 1840 was binding on all Māori. The proper polity where mana whakahaere or power and authority was recognised to be the place at which rangatiratanga was located was at the Hapū level and not the Wakaminenga (United Council of Tribes). This is reinforced by a simple interpretation of the Māori text of the preamble to Te Tiriti/the Treaty itself. The proposition asserted by Crown counsel is inconsistent with Māori Law or Tikanga Māori as it operated at the time of signing of Te Tiriti/the Treaty. Most importantly, the facts that have unfolded in this Inquiry do not support the proposition contended for.

38. These matters were covered in significant detail under the sub-heading "*The Whole of New Zealand Approach*" in Closing submissions for the

[2] Wai 2180, #3.3.0089 Crown Submissions Issue One Tino Rangatiratanga at [15].

Claimants and we do not wish to repeat those matters here but to refer the Tribunal to those parts of that submission to refute Crown counsel's position.

UNDRIP

8. UNDRIP was endorsed by New Zealand in 2010.[3] It was described by the Wai 262 Tribunal as "(p)erhaps the most important international instrument ever for Māori people". While not binding, it is of 'major and lasting importance where maximum compliance is expected'. [4]

9. The Tribunal has previously confirmed that interpretation and application of Tiriti principles are informed by UNDRIP.[5]

10. Free, Prior and Informed Consent (FPIC) is a specific right that pertains to indigenous peoples and is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It allows them to give or withhold consent to a project that may affect them or their territories. Once they have given their consent, they can withdraw it at any stage. Furthermore, FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated. This is also embedded within the universal right to self-determination.

11. There are three categories of "Free, Prior and Informed Consent" referenced in UNDRIP, each dealing with access to lands and resources.

12. The first category contains provisions requiring the State to obtain free prior informed consent where:

    12.1 Indigenous groups are forced to relocate from their lands (Article 10); and

[3] Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011) at 233.
[4] Waitangi Tribunal *Whaia te Mana Motuhake*, (Wai 2417, 2015) , at 34.
[5] Waitangi Tribunal *Whaia te Mana Motuhake*, (Wai 2417, 2015) , at 44.

12.2 where there is a plan to store or dispose of hazardous materials on their lands (Article 29 (2)).

13. The second category requires the State to seek to obtain free prior informed consent through a process of consultation before undertaking certain activities which could affect their lands and resources (Articles 19 and 32(2)).

14. The third category of FPIC provisions in UNDRIP address restitution for Indigenous peoples who have lost possession of their lands, suffered a loss of cultural, intellectual, religious or spiritual property without their consent (Articles 14(2) and 28(1)).

15. It is in the context of this claims that the interconnection between the principles articulated in UNDRIP assist this tribunal in understanding the scope of hapū rangatiratanga of Ngāti Paki and Ngāti Hinemanu that is relied upon to refute the assumption of sovereignty which is explicit in the crown's submissions as having been achieved at 1840.

16. Hapū were guaranteed rangatiratanga by Te Tiriti/theTreaty. This promise holds true today but was of particular significance for observance in 1840. It is the duty of the Crown to respect the right of Māori to control decisions in relation to their lands and the things of value to them. These rights are exercised within the context of the Crown's right to govern which should operate so as not to delimit the exercise of tino rangatiratanga. In 1840 it is clear that it was at the hapū level that such an exercise of power was located.

17. The Crown's assumption that because it signed a document with some Rangatira that fact, created an immediate relationship with all hapū who occupied territories in Niu Tireni is flawed. It is even more difficult to sustain given the agreed facts in this inquiry that it was not until 1860's that any contact by Crown officials was effected in the territories where Ngāti Hinemanu and Ngāti Paki exercised their power and authority.

18. The most offensive part of the Crown's submissions is the suggestion that at 1840 that all Māori became British subjects, and as such were entitled to the protection of the British Crown by dint of the Crown's assumption of sovereignty.[6]

19. It is clear that it was certainly the Crown's aim when it signed te Tiriti o Waitangi/the Treaty of Waitangi, to undertake Tiriti/Treaty obligations towards all Māori, as part of the process of securing a legitimate and moral foundation for British sovereignty.

20. Crown counsel omits in their analysis to remind that following the 6 February signing emissaries for the Crown continued to try and gather signatures throughout the Northland region and beyond. We say this was because, as a matter of fact, those officials knew they required free prior consent of all hapū as a precondition to their colonial plan.

21. Furthermore, that there were clear examples where individual hapū clearly were determined not to sign the Tiriti because as Te Wherowhero reminded he had already signed the He Whakaputanga document in July 1839 and saw no need to sign any other covenant and as others from Te Arawa would record they chose deliberately not to sign any document that would place their mana beneath the petticoats of a Victorian Queen and sent Iwikau, the younger brother of Te Heuheu, back to Waitangi to revoke the signature he had placed ostensibly for the family of Te Heuheu on February 6 1840.

22. It is grasping at straws when the Crown looks to conduct outside the district under consideration too to legitimate their position of a lawful assumption of sovereignty in Pakeha law terms too. At paragraph [20] of their Issue One submission, they concede that while the Crown had a very limited presence in the inquiry district before 1870, the Crown did have relationships with some Taihape Māori in other areas. By 1840, significant portions of the Taihape population had relocated to adjoining regions for strategic and security reasons (including to

[6] Wai 2180, #3.3.0089 Crown Submissions Issue One Tino Rangatiratanga at [16].

Manawatū, Heretaunga, and into the Tūwharetoa rohe). Some Taihape Māori with interests in, or whakapapa connections to Taihape signed te Tiriti/the Treaty. Some chose to support the Crown in conflicts in the 1850s and 1860s and formally swore allegiance to the Queen (at Omahu in 1865). The closing submissions for the claimants deal with each of these matters in detail which we commend to the Tribunal as a starting point in reply.

23. It is disappointing, though not surprising, that the Crown submissions have not sought to have the Treaty analysed in a way that would see the intentions of the parties understood in accordance with the plain meaning of the authenticated text.

24. The Crown submission taken as a whole has a propensity of watering down attributes of Tikanga Māori when they are exercised by Ngāti Hinemanu and Ngāti Paki to give effect to Te Tiriti principles of tino rangatiratanga.[7] The submissions suggests when hapū exercise sovereign power, it is something less than absolute; and in the same way, tino rangatiratanga is continually portrayed as a form of rangatiratanga that is not quite tino. Tikanga Māori is certainly not observed as being equal to Pākeha law either.

25. In this respect we remind the Tribunal how the courts and this Tribunal have evolved an understanding that gives respect to this proposition that Tikanga Māori is law and must be considered in any constitutional analysis of the Te Tiriti rights and obligations relied upon by the claimants.

Tikanga is Māori Law

26. In the Aotearoa/ New Zealand context Eminent Māori Jurist Moana Jackson is not alone in his observations that the source of rights in the

[7] Wai 2180, #3.3.0089 Crown Submissions Issue One Tino Rangatiratanga at [6].

context of rights recognition is Tikanga which is Māori law. Dame Judith Binney has pointed out:[8]

> Māori had a legal system based upon well-established custom, concepts of collective responsibility and the resolution of disputes through compensation.

27. Ani Mikaere reminds that:[9]

> Tikanga Māori was the first law of Aotearoa, a law that served the needs of tangata whenua for a thousand years before the arrival of tauiwi.

Tikanga is part of the Common Law

28. Pākehā law too has moved to an acceptance that Tikanga is part of the common law of Aotearoa New Zealand. This follows from the common law of England being "adapted to reflect local custom" in Aotearoa, and English law only applied "so far as applicable to the circumstances".[10]As the Court of Appeal put it recently, because tikanga is the source of Māori property rights, the necessary consequence is that tikanga is part of the law:

> We consider that it is (or should be) axiomatic that the tikanga Māori that defines and governs the interests of tangata whenua in the taonga protected by the Treaty is an integral strand of the common law of New Zealand. [11]

29. Elias CJ has further commented in the case of *Ngāti Whātua Ōrakei Trust* v *Attorney-General* that "Rights and interests according to tikanga may be legal rights recognised by the common law…".[12]

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[8] Judith Binney "The Native Land Court and the Māori Communities" in Judith Binney, Judith Bassett and Erik Olssen (eds) The People and the Land: Te Tangata me te Whenua: An illustrated history of New Zealand 1820-1920 (Allen & Unwin, Wellington, 1990) 17. Cited in Law Commission publication Māori Custom and Values in New Zealand Law: NZLC SP9.

[9] Ani Mikaere "Cultural Invasion Continued: the Ongoing Colonisation of Tikanga Māori" (2005) NZYbkNZJur 18; (2005) 8.2 Yearbook of New Zealand Jurisprudence 134.

[10] *Attorney-General v Ngāti Apa* [2003] 3 NZLR 643 (CA), at [17].

[11] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZCA 86, [2020] NZRMA 248 at [177].

[12] *Ngāti Whātua Ōrakei Trust v Attorney-General* [2018] NZSC 84; [2019] 1 NZLR 116 at [77].

Palmer J has also stated that "Tikanga Māori was the first law in Aotearoa" and that "It is recognised by Acts of Parliament." [13]

30. Other more recent pronouncements by the High Court have reinforced these observations but made some important refinements. For instance Cooke J observed at para [103] in the Mercury Energy NZ v Waitangi Tribunal that:[14]

> It is now well accepted that tikanga Māori is part of New Zealand's common law. There is a degree of ambiguity, however, in describing it as "part of" the common law. It has previously been identified as a source for the development of the common law. This is uncontroversial as the courts frequently looks to customs, practices, and contemporary societal attitudes when the common law is developed. But tikanga can be a little more than that. In some situations, tikanga will be the law, rather than merely being a source of it. There will be situations, perhaps particularly when the relevant Māori participants agree upon the tikanga to be applied where a court or tribunal will be applying that tikanga to resolve the matters within its jurisdiction.To state the obvious the relevance and significance of tikanga will be highly contextual.

31. The claimant position is that the supreme authority in this country was exercised by all hapū absolutely. How those hapū chose to align for the purposes of exercise of that authority was for themselves to determine. The Crown's efforts to say otherwise or to assume that they did not require the express consent of all hapū at the time Te Tiriti o Waitangi was signed or subsequent to that date are, frankly, racist.

32. The CNI Report makes a number of findings of relevance to the claims promoted by Ngāti Hinemanu and Ngāti Paki in this regard, including the assertion in particular that the fundamental grievance at the root of all Treaty breaches was the Crown's failure to give effect to the Treaty guarantee of Tino Rangatiranga: [15]

> Fundamentally the Central North Island claims are about autonomy. Everything economic self-management and

[13] *Ngawaka v Ngāti Rehua-Ngātiwai ki Aotea Trust Board* (No 2) [2021] NZHC 291 at [2] & [43].
[14] *Mercury Energy NZ v Waitangi Tribunal* [2021] NZHC 654 at [103] (footnotes excluded).
[15] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims Stage One Volume I* (Wai 1200, 2007); Part II Chapter 3 at 4.

> success, cultural health and survival, political self-government, social self-regulation all flows from the ability of a people to remain autonomous and in control of their destiny.

33. In the Te Urewera Report the Tribunal found that whilst te Tiriti/the Treaty applied nationally, it only did so to the extent it recorded obligations on the Crown, and that reciprocity of obligation depended on Tūhoe recognition of the relationship to them.[16] We commend this approach to the Tribunal to assist its conclusions in the Taihape Inquiry District.

Authority of the Queen

34. The Crown in submissions on Constitutional and Political Engagement issues suggest that Taihape Māori generally recognised the authority of the Queen – but that was not absolute, nor unconditional, nor fixed for all time.[17]

35. The Crown acknowledges that Taihape Māori sought to maintain their mana motuhake and to enter a partnership with the Crown, but the Crown did not always honour this partnership and has (at times and in ways set out as concessions in the Crown's closing submissions) denied Taihape Māori their rights under te Tiriti o Waitangi/the Treaty of Waitangi.[18]

36. The difficulty with these concessions by the Crown is that immediately following them comes the further suggestions in the body of the submissions from the Crown on Issue One, that once unpacked, contradict those general principles and seek to put an overlay of analysis that is not supported by the evidence. We do not accept that the commitment to the principles of co-operation and support has characterised the Taihape Māori relationship with the Crown. Indeed the evidence for Ngāti Hinemanu and Ngāti Paki is much more nuanced and relationships developed or fractured with the Crown and

[16] Waitangi Tribunal, *Te Urewera Report*, Wai 894 at 133 and 134.
[17] Wai 2180, #3.3.0089 Crown Submissions Issue One Tino Rangatiratanga at para [15]
[18] Wai 2180, #3.3.0089 Crown Submissions Issue One Tino Rangatiratanga at para [5]

its agents as a direct consequence of events or circumstances prevailing.

37. At paragraph [32] of the Issue One submission the Crown submits that there is little evidence (if any) of Taihape Māori explicitly rejecting the Crown having assumed sovereignty. However, there is significant evidence of them holding Crown conduct to the standards of te Tiriti/the Treaty, and of them seeking to maintain and exercise their rangatiratanga including through their strategic objectives for the settlement and development of the area (at both collective and individual levels).

38. This summary of the Ngāti Hinemanu and Ngāti Paki position is confusing and must be rejected on the evidence. It also contradicts later submissions made by the Crown at paragraph [13] of their closings on Issue One where they acknowledge statements of Winiata Te Whaaro and Rēnata Kawepō and others appear to recognise the Queen (and Governor's) authority on the one hand, while also asserting their own rangatiratanga through such actions as pronouncing on the injustice of Government actions on the other.

39. It also ignores the evidence of Moana Jackson and Hape Lomax for Ngāti Hinemanu and Ngāti Paki is clear that Te Tiriti/the Treaty was not a treaty of cession.

40. Furthermore, we remind the Crown that Winiata Te Whaaro is recorded as fighting against the crown as a young person at Te Porere in support of Te Kooti and others from Tuwharetoa and then later joining hands with his kin from Ngāti Kahungungu to fight with Renata Te Kawepo in support of Crown tactics of invasion against other Māori and their territories. The subsequent incidents at Pokopoko and statements made by Winiata Te Whaaro and others following his arrest reinforce the view promoted by the claimants in their closing submissions that he was a discerning Rangatira upholding Mana Motuhake and Tino Rangatiratanga as principles that governed his

decision making to ensure the self-independence of his people continued. His decisions were not about promoting relationships with the Crown or settlers they were about ensuring the proper exercise of authority in accordance with values and obligations to present and future generations that guide the practice of Tikanga Māori.

41. We wish in reply to close our response to these parts of the Crowns submission with the reminder to the Tribunal of the frame of reference Moana Jackson proffered from which Winiata Te Whaaro's conduct for and on behalf of Ngāti Hinemanu and Ngāti Paki is to be assessed when he noted in his Summary of Evidence:[19]

> *17. Since 1840 a burden has been placed upon all Iwi and Hapū seeking to challenge the acts and omissions of the Crown. That burden has not just been that of proving a particular case but the purported need to accept that the doctrines, presumptions and very meaning of Crown authority and law are somehow based upon, or are themselves, unchallenge-able givens.*
>
> *18. A similar burden is rarely borne by the Crown. Instead it is able to rely on what is essentially an illusion of good faith in which even the most illogical and egregious presumptions within its law and the exercise of its power are simply accepted as the frame of reference within which Māori must assert or define the rights which they claim.*
>
> *19. Ever since Winiata Te Whaaro sought to assert his rights in Court the people of Ngāti Hinemanu and Ngāti Paki have had to bear that burden, just as he did. Yet there is a searing unreason and injustice in the burden which ignores the origins and even the make-believe that underpins all of the Crown's presumptions. For they are part of the founding jurisprudence upon which the colonising States of Europe sought to dispossess Indigenous Peoples after 1492, and they continue to be the grounds upon which the rights of Māori are determined.*
>
> *20. Most Pākehā jurists simply accept the presumptions and the resulting legal discourses as matters of jural truth. For example, the jurist Paul McHugh has asserted that the discourses which led to the assertion of Crown sovereignty in this land, and thus the eventual removal of Winiata Te Whaaro from his*

[19] Wai 2180 #H7 Summary of Evidence Moana Jackson dated 7 December 2017 [17]-[21].

> *people's whenua, are part of an acknowledged history "of erecting a British imperium in territory occupied by non-Christian and tribal people".8 In that formulation, the legitimacy of the history is simply accepted as a fact, as if its acknowledgement and constant repetition alone makes it valid.*
>
> *21. However, the whole rationale behind the presumptions and the discourse, and their subsequent positioning within the laws used to separate Winiata Te Whaaro from his people's land, are not derived from some reasoned debate about points of internationally applicable jurisprudence. Rather they are the deliberate construction of a legal artifice to justify what was actually unjustifiable – the taking away of the lives, lands and power of innocent peoples who had done Europeans no harm nor posed any threat to them.*

Pathway Forward

42. At paragraph [79] of the Crown's closing submissions on Issue One, the Crown suggests that constitutional dialogue is best progressed through multiple means. They recognise non-governmental processes such as Matike Mai as also being critical. They suggest that some of the constitutional issues raised by the claimants are best deferred to the planned Tribunal's planned kaupapa inquiry into the constitution, self-government and the electoral system will be able to bring focussed attention to these issues (with an inclusive approach) beyond that capable within any district inquiry.

41. Ngāti Hinemanu and Ngāti Paki agree that the kinds of constitutional change required to honour Te Tiriti guarantees is part of an ongoing process but believe that this Tribunal should grapple with the issues itself has identified as critical. The Tūhoe report made it clear that any co-existence cannot be unilaterally determined by the Crown, but requires negotiation in good faith to reach a principled conclusion and may vary according to the matter at hand:

> In their respective languages, the concepts of 'sovereignty' on the one hand, and 'tino rangatiratanga' or 'mana motuhake' on the other, connote absolute authority, and so cannot co-exist in different people or institutions. Therefore, striking a

> practical balance between the Crown's authority and the authority of a particular iwi or other Māori group must be a matter for negotiation, conducted in the spirit of cooperation and tailored to the circumstances.

42. For Ngāti Hinemanu and Ngāti Paki the principles that underpin such a process require considered recommendations from the Tribunal now. Accordingly they ask that this Tribunal not shirk from what they accept is a difficult task. Counsel are comforted by the following pronouncements from the CNI Tribunal and commend them as a starting point in identifying pathways forward to Honour Te Tiriti[20]:

    42.1 The Crown's sovereignty was constrained in New Zealand by the need to respect Māori authority. Under the Treaty, the Crown had to respect and provide for the inherent right of Māori in their Central North Island territories to exercise their own autonomy or self-government. That right carried with it the right to manage their own policy, resources, and affairs within the minimum parameters necessary for the proper operation of the State.

    42.2 It also carried the right to enjoy cooperation and dialogue with the Government. As noted above, the Treaty of Waitangi envisaged one system where two spheres of authority (the Crown and Māori) would inevitably overlap. The interface between these two authorities required negotiation and compromise on both sides, and was governed by the Treaty principles of partnership and reciprocity

    42.3 In our view, the obligations of partnership included the duty to consult Māori on matters of importance to them, and to obtain their full, free, prior, and informed consent to anything which altered their possession of the land, resources, and taonga guaranteed to them in Article II. The Treaty partners

[20] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008), at 173.

were required to show mutual respect and to enter into dialogue to resolve issues where their respective authorities overlapped or affected each other.

43. The Claimants believe that what is also required to address the matters raised herein are:

a) significant change in the dominant legal philosophy and culture;

b) a new theory of the NZ constitution;

c) a different notion of sovereignty; and

d) greater recognition of the law-making authority of Māori collectives built on the primacy of hapū rangatiratanga not crown created polices of large natural groups.

B. NINETEENTH CENTURY LAND USE, MANAGEMENT AND ALIENATION

NATIVE LAND COURT

44. This section is in reply to the Crown closing submissions relating to Issue 3 of the Tribunal Statement of Issues.[21]

45. We adopt the generics submissions in reply regarding Native Land Court ("NLC"). In addition, we make the following submissions.

46. A significant number of the issues that are being explored by the Tribunal that have particular application to the Claimants have been conceded to by the Crown in its statement of concessions on the point. Key propositions however, that the imposition of the Court without the full, free and informed consent of Taihape Māori was a breach of the Treaty guarantees is simply skirted around in the Crown's submissions.

47. As a preliminary comment, the Claimants are very critical of the Crowns failure to engage with their matters. The Crown make no real

[21] Wai 2180, #3.3.104.

effort to respond to Ngāti Hinemanu and Ngāti Paki and their argument that the Native Land Court process was fundamentally a distortion of Tikanga. While the Crown acknowledges that the court did not easily accommodate the complexities of communal ownership, the Crown has avoided the argument that some claims that were permitted were not in accordance with custom.

48. The Native Land Court provided a forum for interested parties to reclaim or renegotiate their traditional rights over the land. However, it needs to be asked in light of the Crown submissions whether the Native Land Court provided the best forum for Māori to resolve differences over boundaries. As indicated by the applications for rehearing of various subdivisions, the process and judgments of the court did not satisfy all parties and worked to seriously disenfranchise Ngāti Hinemanu and Ngāti Paki of their traditional territories.

49. It is our submission that the Native Land Court did not provide Māori with the best process; it was a Pākehā system which was imposed upon them and it did not accord with tikanga. As has been noted above, the more detailed submissions Dr Bryan Gilling in relation to this point are adopted in full.

50. The Crown submissions state at paragraph [14] that whilst the Crown had created the Native Land Court, it only became active where people made applications to it. Ngāti Paki and Ngāti Hinemanu refute this conception of why the Native Land Court came to be utilised in the Taihape District. They remind that they never agreed to the establishment of the NLC. They were never consulted as to the scope of its operations and purposes, and this is corroborated by the fact that there was no particular engagement with Taihape Māori until after the 1870's when those Acts had been well established and were in operation in other parts of the country. The fact of its arrival prompted a range of different hui to consider its impact and the erection of pou to ensure customary relationships were known to interlopers into the territories

of Ngāti Hinemanu and Ngāti Paki where their law and Tikanga operated must be contextualised as part of these assertions

51. We say it is clear that the Native Land Court and its apparatus was effectively imposed on Ngāti Hinemanu and Ngāti Paki in circumstances where they were forced to defend their ancestral rights in those lands which then required participation in hearings in Hastings; Wanganui and then inside the Taihape region. The costs and impacts of this is well documented with some dying in their efforts to uphold their customary relationships to land.

52. The Native Land Court in the institution of a system of Crown-derived titles impacted significantly on the exercise of customary authority and control over lands of Ngāti Hinemanu and Ngāti Paki. Sections 59 and 65 of the Native Land Act 1873 provided for the alienation and partition of the individual interests. The Turanga Tribunal has found with regard to the effect of ss 59 and 65:

> [A]ny formal power of chiefs, by tikanga, to prevent individuals from selling was over-ridden in effect by the philosophy of the 1873 Act and the specific terms of section. Nor did the community by consensus have any veto against the sale of individual interests. By the terms of section 65, if a majority agreed to allow the sellers to partition out their interests for the purpose of sale, the court could do so. Within seven years, this majority requirement was dropped. Any individual could partition out his or her interests.

53. Underpinning the Crown's approach in this inquiry is the contention that the "system was not designed to separate Māori from their lands". The Crown's argument appears to be that while the rapid alienation of Māori land may have been a practical outcome of the Native Land legislation, it was not a result that was intended by the legislation. In contrast, the evidence was that the Native Land legislation fitted neatly into Crown policy that sought to provide settlers with "superfluous" Māori land and which sought to assimilate Māori into a system of individualised ownership of private property.

54. The Turanga Tribunal has also dealt with the same Crown argument but found that "it is clear that the purpose of the system was to ensure that the bulk of the Māori land base passed out of Māori ownership". [22] That Tribunal also found that an "objectionable effect of the Act [(the Native Land Act 1873)] was […] that Māori could participate in the new British prosperity only by selling or leasing their land".[23] In this regard, the system provided that Māori would be separated from their lands if they wished to participate in the new economic order. This is a further reason why the legislation was in fact designed to separate Māori from their lands.

55. One point of law needs to be emphasised, which relates to the means the Crown had at its disposal to exclude private competitors from blocks targeted for purchase. Before the Native Lands Acts were enacted, the Crown had a complete monopoly under the doctrine of Crown pre-emption (reflected in the Treaty and in local ordinances).

56. However, pre-emption was specifically waived by the Native Lands Acts 1862. The whole point of the Native Lands Acts was to privatise land-buying and end Crown pre-emption.[24]

57. At para [14], the Crown uses the example of the Paraekaretu Block as an illustration of the first cases to be heard in the district. The analysis assumes that the first applications made to the NLC were not made by individuals for their own benefit, but by the multiple Rangatira who they were holding hui with. Our Claimants disagree with this contextualisation of what occurred. It certainly was not the experience of Winiata Te Whaaro and his hapū of Ngāti Paki and Ngāti Hinemanu. In terms of the rights of Winiata Te Whaaro and Ngāti Hinemanu and Ngāti Paki, the initial significance of the Ōwhāoko and Ōruamātua-

[22] Waitangi Tribunal, *Turanga Tangata Turanga Whenua* (Wai 814, 2004) at 526.
[23] Waitangi Tribunal, *Turanga Tangata Turanga Whenua* (Wai 814, 2004) at 444.
[24] See Native Lands Act s 1862, Preamble ("And whereas…Her Majesty may be pleased to waive in favour of the Natives so much of the said Treaty of Waitangi as reserves to Her Majesty the right of pre-emption of their lands and to establish Courts and to make other provision for ascertaining and defining the rights of the Natives to their lands…").

Kaimanawa title investigations was that they were instigated by Māori whose main places of residence lay outside of Mōkai Pātea, driven by the need to give legal legitimacy to an existing pastoral lease, or leases.[25]

58. In the northern part of the district, it was Renata Kawepo who took the first application of the Oruamatua-Kaimanawa and Owhaoko lands to the NLC in 1875, not Taihape Māori. By the mid-1870s, Rēnata Kawepō was desperately keen to lease substantial areas of Mōkai Pātea and by the mid-1880s he was willing to sell the Mōkai Pātea lands outright in order to retire not only the debts incurred from the wars, but also those accruing from the heavy costs of putting the land through the Courts.[26] The Mangaohāne decision must also be seen in the context of the Court's previous decisions in favour of Rēnata Kawepō in the problematic title investigations of Ōruamātua-Kaimanawa and Ōwhāoko.[27]

59. In response to para [15] of the Crown submissions, Ngāti Hinemanu me Ngāti Paki disagree that all Taihape Māori understood the risks they were taking when they involved themselves with the NLC. In the mid 1870's, Winiata Te Whaaro and his hapū of Ngāti Paki and Ngāti Hinemanu had no need to take their land to the NLC or worry about what those risks might be. Winiata Te Whaaro and his people weren't looking to gain title to establish a legal lease or to on sell land as they were farming and living on their ancestral lands living according to their tikanga and asserting their rangatiratanga and mana motuhake.

60. At para [29] of the Crown closing submissions, the Crown say that the investigation of title by the Native Land Court was a process set out in the Native land legislation and intended to provide a form of title that reflected customary rights and interests in land. Section 24 of the Native

[25] Wai 2180, #A52 at 230.
[26] Wai 2180, #A52 at 220.
[27] Wai 2180, #A52, at 276.

Land Court Act 1880 required the Native Land Court to ascertain title to land "according to Native custom or usage".

61. Our Claimants say whatever the intention, this is not how the Native Land Court operated. The outcomes for Winiata Te Whaaro and his hapū did not reflect his customary rights or interests. The Claimants agree with what Dr Vincent O'Malley says:

> *"while individuals were able to exercise some agency within the margins of overall process when it came to the broader structural pressures that drive the court, it's essential role of encouraging land sales and the destruction of Māori tribal structures is harder to deny".*[28]

62. A key issue for Ngāti Hinemanu me Ngāti Paki is how the Crown had redefined the whakapapa and identity of Ngāti Hinemanu me Ngāti Paki, Winiata Te Whaaro and his descendants to disenfranchise them of thousands of acres of their whenua belonging to their hapū estate.[29]

63. In response to para [39], the Claimants say that while the Crown says that the objectives of the NLC are not unreasonable, the outcomes of those objectives damaged the tribal structure of Winiata Te Whaaro and his hapū of Ngāti Paki and Ngāti Hinemanu. The outcomes and effects are very prevalent today.

64. In response to para [40], the Claimants say that whilst the Crown is admitting to failing to cater for customary values sufficiently, they are not conceding to the fact that they failed to accept the customary values of Winiata Te Whaaro and his hapū of Ngāti Paki and Ngāti Hinemanu when they ignored his ancestral whakapapa in preference of supporting early lands leases and lessors to gain title to land that he and his people were living on and farming at Pokopoko, Mangaohane south of the Mangaohane stream.

65. Mr Lewis Winiata explains how he believes that the systematically destroying of the whakapapa of his tīpuna Winiata Te Whaaro

[28] Wai 2180, #A52 at 223.
[29] Wai 2180, Amended Statement of Claim at 9.

throughout the Native Land Court investigations over a number of years, denied the customary rights both ancestral and occupational of Ngāti Hinemanu me Ngāti Paki and Winiata Te Whaaro, is a claim of its own.[30] Mr Winiata says that the outcomes of the NLC judgements upon the mana and rangatiratanga of his great grandfather Winiata Te Whaaro followed him throughout all the land court hearings in the district.[31] He says that the ongoing belittlement of the mana and rangatiratanga status of his Rangatira, Winiata Te Whaaro by the Native Land Court and its processes, is felt by all his descendants right through to today. "Our wairua had been affected by these losses. When you look at it like that you could say we are culturally and spiritually unwell."[32] The denial of multiple tīpuna of Winiata Te Whaaro and his hapū followed them right through the NLC beginning at the 1884/85 Mangaohane Title investigation.

66. In response to para [41], the Claimants are not sure what version of equality the Crown is referring to. It is clear to the Claimants that Winiata Te Whaaro and his people were not endowed with any versions of equality. Their customary rights were diminished whilst others who were informally leasing and dealing sought to gain interests that would eventually remove them from their ancestral lands at Pokopoko, Mangaohane. This is discussed in detail at para [205] of Ngāti Hinemanu me Ngāti Paki Claimant specific closing submissions.

67. As Moana Jackson stated:[33]

> *"The Crown consistently and completely denied Ngāti Hinemanu and Ngāti Paki independence and autonomy and directly interfered and usurped:*
>
> *a) their authority and rangatiratanga; and*
>
> *b) the right to manage and control their social structures and esteemed institutions in accordance with their own laws, cultural preferences and customs."*

[30] Wai 2180, #G14, Brief of Evidence of Lewis Winiata at 3.
[31] Wai 2180, #G14, Brief of Evidence of Lewis Winiata at 3.
[32] Wai 2180, #G14, Brief of Evidence of Lewis Winiata at 17.
[33] Wai 2180, #H7 at 6.

68. In response to para [42], the Claimants say that there was no protection for the interests of Winiata Te Whaaro who was actually living and farming his ancestral lands. As Peter McBurney says:

> *The immediate forebears of his (Winiata Te Whaaro) hapū had maintained unbroken occupation of the land in question and in the district since time immemorial in precisely the way prescribed by the Court.*[34]

69. The framework to how the destruction of his whakapapa and ancestral rights to lands in the Taihape district begins with the early history and land leasing dealings of the Oruamatua-Kaimanawa and Owhaoko Lands and Mangaohane lands involving Renata Kawepo and certain ancestors of Ngāti Whiti.

70. In response to para [43]-[46], the Claimants say that the Crown imposed their laws upon Māori. Moana Jackson stated:

> "*However, it was always much more than that, and the rule of law promoted by the Crown was only ever a justification to use the colonisers' law to rule over Māori. The statutes relating to Māori land were crucial in that regard, and as the Tribunal pointed out in its Orakei Report in the decades prior to the removal of Winiata Te Whaaro there were "at least three Acts per annum on Native Land matters" which inevitably resulted in ongoing confusion and injustice.5 The Tribunal especially noted that the purpose of all this frantic legislative activity was to ensure that "Māori lands were to be individualized by being vested in individuals" and that statutes such as the Native Lands (Validation of Titles) Act were "primarily designed to assist Europeans to gain titles from unlawful transactions…but did nothing to assist Māori grievances that, contrary to the Treaty of Waitangi, the tribal principle was outside the law too, and that that was the cause of their troubles".*[35]

71. Mr Jackson goes on to say:

> *Indeed, any claims about the impartiality of the colonisers' law, and even any adherence to Te Tiriti were necessarily illusory because they were made, and the actions taken by the Crown against Winiata Te Whaaro were played out in, the context of colonisation where impartiality was always subject to the interests of the colonisers. The supposed reason of their law was always the template for the unreason of Māori dispossession.*[36]

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[34] Wai 2180, #A52 at 276.
[35] Wai 2180, #H7 at 9.
[36] Wai 2180, #H7 at 9.

72. The Claimants make the following arguments in response to paragraphs [49]-[61] of the Crown submissions in relation to the pressures and opportunities for Taihape Māori. They have drawn cases from particular time periods and placed them in a timeline to highlight the pattern of disconnection that was effected by dint of the operation of the NLC itself.

1860's

73. At para [49], the Crown states that Taihape rangatira were quite aware of the risks and benefits of the Native Land Court process, and their actions were no doubt informed by that. The Claimants say that Winiata Te Whaaro and his people may have been aware of the risks of the NLC hence the reason why he never took part in any of the early applications to the NLC or early leases of lands surrounding his ancestral lands he was living and farming. He steered away from the NLC for as long as he could while farming and living on his ancestral lands. The Claimants further say that there were no concerns about him being on those lands until there was a need for the Studholme's to gain a legal lease and legal title to those lands.

74. Once Te Whaaro saw that his lands were at risk, he then participated as a counter claimant in the 1884/85 Mangaohane Title investigation. His position landed him in the company of the Ngāti Hinemanu. His Ngāti Paki and Ngāti Ngahoa claim was dismissed it along with the Ngāti Hinemanu claims. Key individuals such as Renata Kawepo and the Studholme's were situating themselves on the Owhaoko lands as early is the mid 1860's and the Mangaohane lands as early as 1879-80. As early as the mid-1860's, the area later defined as the Owhaoko block was leased by Renata Kawepo and members of Ngāti Whiti to a number of different Pākeha: first, Richard Maney and then soon hereafter the Studholme family.[37]

[37] Wai 2180, #A6 at 31.

75. The Crown give examples to show that different Taihape Māori were involved in the NLC process and were either leasing lands looking for a title to formalise their lease or in prior selling arrangements with Crown Land agents for whatever their purposes were. The Claimants say that this was not what Winiata Te Whaaro and his hapū were doing.

76. Whilst the Crown points out that there is a perception that Renata Kawepo was a Rangatira of Taihape just as much as he was a Rangatira of Hawkes Bay as mentioned in the Crown closing submissions at para [56], our Claimants disagree. That perception was bestowed upon him by the NLC and the Crown. Mr Peter McBurney in his report provides a summary on the status of Renata Kawepo in the Taihape district. This summary is not to ignore what he did do for his people however, the elevation of his status by some of the Crown commentators overlooks the status of the local Rangatira (the real ahi kaa) of the Taihape district with Winiata Te Whaaro being one of them.

> *"Despite the apparent predisposition of the Land Court judges in upholding Rēnata's rights in Mōkai Pātea, it is clear from his evidence that he knew very little about the district. He had not lived on the land although he may have visited one or two places. He was quite unable to give a detailed account of the landscape and neither could he give his whakapapa connections to the blocks, relying instead on Noa Huke to do this for him. At a later hearing, a witness spoke of how Rēnata claimed that his ancestor Te Uamairangi had a pā on the block, but when asked to say where it was during a tour of the land he was quite unable to do so. No one else had ever heard of this pā".*[38]

77. Below are some examples of how Renata Kawepo positioned himself in the Taihape district to take benefit. That position eventually led to the removal of Winiata Te Whaaro and his hapū from their ancestral lands at Pokopoko Mangaohane south of the Mangaohane stream. We do so not to demean the mana or character of Renata Te Kawepo but to illustrate the dynamic of the NLC process itself and how it pitted kin against kin and enabled those with significant understandings of Pākeha values to be early adopters to gain advantage from the process of individualisation in play.

[38] Wai 2180, #A52 at 261.

78. For Ngāti Hinemanu and Ngāti Paki, we say that the evidence is overwhelming that the Native Lands Acts actively facilitated the alienation of Māori land. The legislation did clothe Māori with an alienable title. Yet, the Crown soon became adept at devising an appallingly grinding and effective land purchasing system to take account of this, which was a policy which developed separately Ngāti Hinemanu and Ngāti Paki descendants from the Native Lands Acts.

79. This furthered 'colonisation' in that land passed into the hands of the Crown (the major purchaser) or private buyers. Crown policies were directed at settlement, certainly however for Ngāti Hinemanu and Ngāti Paki, Pākehā settlement was at their expense. For them it meant dispossession and disconnection from prime lands and resources that they had under their authority and the reality of landlessness.

1879/84

80. At para [315] of the Crown submissions, the Crown discuss some of the Ōwhāoko block and the Ōruamatua-Kaimanawa block and the initial impetus for putting some of this land through the Native Land Court was a proposal by Rēnata Kawepō at the Turangarere hui. The Claimants further add that Studholme engaged the prominent lawyer Walter Buller to persuade Renata Kawepo to allow him to occupy Mangaohane lands. Between 1881 and 1884 Studholme paid Renata Kawepo a total of £1,850 for an informal 'lease' of Mangaohane lands.[39] These leases were adjacent to where Winiata and his hapū were living and farming. These early leases and land deals had a huge impact on what went on in the NLC and the denial of the whakapapa and ancestry interests of Winiata Te Whaaro in the Mangaohane and Pokopoko lands where he and his hapū were farming and living.

1886

[39] Wai 2180, #A56 at 16-17.

81. At para [370] of the Crown submissions, the Crown discuss the outcome of the 1886 Inquiry. The Claimants say that the outcome was driven by Stout, came the Owhaoko and Oruamatua-Kaimanawa Reinvestigation of Title Act 1886, which provided for the titles to both blocks to be investigated as if they were customary Māori land, except that the lease interests of Studholme and Birch in the two blocks were to be protected.[40] The following chronological Native Land Court Investigations and Judgements highlights how the Courts worked systematically to support the denial of key tīpuna of Winiata Te Whaaro and his hapū to keep him out of thousands of acres of their ancestral lands.

1884/85 Mangaohāne Investigation

82. A detailed Mangaohāne title determination history and analysis is located in the Crown closing submissions on Issue 6. The submissions in reply to this issue is covered below. However, counsel wish to make the following comments in relation to the Mangaohane investigation here.

83. In the 1884/85, Mangaohane investigation the claim of Winiata Te Whaaro was wrongly seen and decided as a Ngāti Hinemanu claim. Even though Winiata Te Whaaro had ancestral links to Hinemanu, nowhere does he depict Hinemanu in his whakapapa. Winiata Te Whaaro claimed through Ohuake and his hapū are Ngāti 'Paka' and Ngāti 'Tengawha' (i.e. Ngāti Paki and Ngāti Te Ngāhoa). He also says: *"I claim the portion of land south of the Mangaohane stream…"*.[41]

84. Winiata was a counter claimant represented by Pene Te Uamairangi who was also the conductor for the case of Ngāti Hinemanu. Although he became a key witness for Ngāti Hinemanu and has ancestral connections to Ngāti Hinemanu, his claim was not a Ngāti Hinemanu

[40] Wai 2180, #A43 at 294.
[41] Wai 2180, Māori Land Court Minutes Document Bank Vol 4, Napier MB 9, at 41-43.

claim. His claim was a Ngāti Paki and Ngāti Ngahoa claim from his ancestor Ohuake.

Judgement

85. During the Judgement, the Court found that the right of Whitikaupeka was through his wife Haumoetahanga who was the granddaughter of Ohuake and sister to Punakiao, the mother of Hinemanu who married Taraia 2nd. The Court also found that because Punakiao had married Taraia 2nd and moved to Heretaunga, then the mana remained with the line of Haumoetahanga represented by Ngāti Upokoiri and Ngāti Whiti.[42] At Judgement, the Claim of Winiata Te Whaaro, Ngāti Paki and Ngāti Ngahoa was dismissed along with the claims of Ngāti Hinemanu without explanation or discussion of his evidence.[43]

86. At the beginning of the hearings Te Whaaro provides a substantial whakapapa from his ancestor Ohuake and his two sons Tutemohuta and Rangiwhakamatuku to himself. Others also said he claims occupation through his ancestor Te Ohuake.[44] From Tutemohuta, he uses his Ngāti Ngahoa whakapapa connections through Haumoetahanga and Whitikaupeka, then to Irokino, Tautahi and Ngahoa. He then provides his Ngāti Paki whakapapa connections to Rangiwhakamatuku down to Moretapaki and himself. Winiata Te Whaaro stated: *"These ancestors I have given and their descendants down to my time have always remained on the land. There has never been a lapse of three generations since my ancestor Ohuake."*[45] This is his ancestral, ahi kaa, and occupational right to the whenua

87. Given the above evidence and the ancestral connections of Winiata Te Whaaro to Haumoetahanga and Whitikaupeka, it is clear that the Court didn't only deny his claim, but they also ignored his evidence.

[42] Wai 2180, #A6, Northern Block History, Martin Fisher & Bruce Stirling at 187.
[43] Wai 2180, #A52 at 273.
[44] Wai 2180, #A52 at 42-43.
[45] Wai 2180, #A52 at 266.

88. The Court then makes a contentious decision that Honomokai, a son of Punakiao and Taraia 2nd, was deemed to be the more important ancestor for Mangaohane than Wharepurakau and Irokino who were the sons of Haumoetahanga. Those descendants included Renata Kawepo, Airini Donnelly and others.[46]

89. Te Whaaro also claimed through Ngahoa, another son of Taraia and Punakiao and still his claim was dismissed with no reason. As a result of the Mangaohane 1884/85 title investigation, the land was partitioned in two by the Mangaohane stream using a sketch map that included Pokopoko south of the Mangaohane stream.

90. The application of Te Whaaro for a rehearing of the Mangaohane title was sent to O'Brien J for assessment. Williams J also supplied a letter that stated the reason that the case of Ngāti Hinemanu failed was because Winiata had denied the right of Hinemanu to the land.[47]

91. While under cross-examination by Fraser in the 1893 Mangaohane rehearing, Winiata Te Whaaro was asked if he said Hinemanu had no right to Mangaohane. He said that he did say that and qualified his answer by saying that, in person she had no right but her descendants have a right in Mangaohane. The hapū of Ngāti Hinemanu has a right through Tautahi and the hapū of Haukaha, Ngāi Te Ngahoa and Ngāti Paki.[48]

Initial aftermath of the NLC and their Judgement

92. Prior to years of litigation the initial aftermath following the NLC Judgement eventually led to the Studholme's obtaining title and the removal of Winiata Te Whaaro and his hapū from Pokopoko, Mangaohane.

[46] Wai 2180, #A52 at 266.
[47] Wai 2180, #A39, *Mangaohane Legal History and the Destruction of Pokopoko,* Dr Grant Young at 72.
[48] Wai 2180, 144526 Vol 5, Scannell 30, Winiata Te Whaaro in Chief, January 1893 at 36.

93. Renata Kawepo was found to have interests in both sides of the Mangaohane stream. John Studholme paid Buller £2,000 for winning the Mangaohane title for Studholme. Studholme also paid for the post-title survey of the block (extending the southern boundary to encompass an area the Native Land Court had left un-adjudicated). The purchase agreement reached with Kawepo in 1883 was followed post-title with a down payment of £1000 in August 1885 for Kawepo and others' undefined interests, the balance (on the basis of 10 shillings per acre) to be paid when these interests were defined and located through partition. At this time too, Richard T Warren, Studholme's Owhaoko manager, also leased and purchased the interests of Ngāti Whiti individuals in Mangaohane 1. Over the next four years Warren continued to purchase undivided interests or make advances on the same from a number of registered owners. Studholme also paid for the post-title survey of the block (extending the southern boundary to encompass an area the Native Land Court had left un-adjudicated). The purchase agreement reached with Kawepo in 1883 was followed post-title with a down payment of £1000 in August 1885 for Kawepo and others' undefined interests, the balance (on the basis of 10 shillings per acre) to be paid when these interests were defined and located through partition. At this time too, Richard T Warren, Studholme's Owhaoko manager, also leased and purchased the interests of Ngāti Whiti individuals in Mangaohane 1.[49]

94. The next title investigation Winiata Te Whaaro took part in was the 1886 Awarua Title investigation.

1886 Awarua Title Investigation

95. At para [100] of the Crown submissions, the Crown state that the Native Land Court Act 1894's incorporation provisions could not be utilised for blocks where Crown had acquired a right or interest. For Taihape

[49] Wai 2180, #A56 at 17-18.

Māori, this meant that incorporation was not available until the Crown completed its purchasing of interests in Awarua lands.

96. The partition of Awarua took place later in 1880/91. Te Whaaro always maintained that his forebears had maintained unbroken occupation of the Mōkai Pātea district from ancient times down to himself. Te Whaaro told the Motukawa hearing:

> *The fire on this land and on the Awarua has been kept burning from my ancestors' time down to my mother and myself; our fire spreads all over the land.*[50]

1887 Owhaoko Title Reinvestigation

97. The next title investigation Winiata took part in was the Owhaoko 1887 Title Reinvestigation. From paragraphs [370] to [379] of the Crown submissions, the Crown discusses the outcomes of the Owhaoko Title Reinvestigation.

98. In 1887, Winiata Te Whaaro claimed and traced his descent as belonging to Ngāti Hauiti, Ngāti Hinemanu, Ngāti Whiti, and Ngāi Te Ohuake. He claimed through ancestry, occupation, and conquest.[51] Winiata Te Whaaro claimed through Tauke the wife of Rangiwhakamatuku, sister of Wharepurakau and Irokino and daughter of Haumoetahanga and Whitikaupeka. He also claimed through Puanau a daughter of Kotukuraeroa a descendant of Wharepurakau.[52] The Court viewed the claim of Winiata Te Whaaro as being the same as that of Ngāti Whiti. Ngāti Whiti admitted the claim of Winiata Te Whaaro to be heard with their claim and so the two claims were joined.

99. On winning their case, Ngāti Whiti declined to allow Te Whaaro to put in his list of names. Ngāti Whiti claimed that:

> *'Winiata, and his party are the descendants of Irokino who are known by the hapū name of Ngāti Hinemanu and are not entitled to be called Ngāti Whiti'.*[53]

[50] Wai 2180, #A52 at 161.
[51] Wai 2180, 144526 Vol 9, NĀ 13, Winiata Te Whaaro in Chief, June 1887 at 60.
[52] Wai 2180, #G14, Brief of Evidence of Lewis Winiata at 8.
[53] Wai 2180, Schedule to Moe for Wai 400, Owhaoko D 1893: at 80.

100. Irokino is a son of Haumoetahanga and Whitikaupeka and the father of Tautahi who married Hinemanu.

101. Winiata Te Whaaro pointed out that: "*the hapu name of Ngāti Whiti is borne by the descendants of Irokino to the present day and that the descendants of Wharepurakau are not alone entitled to that designation"*.[54]

102. Cuff, the conductor for Ngāti Whiti and Ngāti Tama, said Ngāti Whiti "will take Winiata in personally for 'aroha', on account of the assistance he has rendered them, but he is to have no following." Winiata objected to this and gave a whakapapa (not recorded) to support his ancestral right as Ngāti Whiti.[55] Winiata rejected the notion of 'aroha' as he sought to be included on the basis of his 'customary' rights not 'aroha'.[56] Being included by 'aroha' for his assistance was a denial of his whakapapa, ancestral rights, tino rangatiratanga and mana motuhake.

103. The court ruled against Winiata and his list. The next day, 8 July 1887, Ngāti Whiti agreed to take Winiata and four on his list, but he still wanted to establish his right rather than rely on this concession, but the court said the matter was closed. This prompted Winiata to say he would seek a rehearing.[57]

104. Winiata was seen by the Native Land Court to be claiming as a Ngāti Hinemanu when he clearly wasn't. Te Whaaro criticised the Court's focus on his primary affiliation to Ngāti Hinemanu, asking the obvious rhetorical question: *what Māori person was confined to only one line of descent?*[58] During the hearing, Ngāti Whiti did not object to Winiata setting up Tauke or Puanau in Court. However, Horima Te Paerau told Winiata outside of the Court that he had never heard of either Tauke or

[54] Wai 2180, Schedule to Moe for Wai 400, Owhaoko D 1893: at 80.
[55] Wai 2180, #A43 at 298.
[56] Wai 2180, #A6, *Northern Block History*, *Martin Fisher & Bruce Stirling* at 55.
[57] Wai 2180, #A43 at 298.
[58] Wai 2180, #A6 at 55.

Puanau. The denial of Horima to the claims of Winiata under these tīpuna was supported by Noa Huke and Renata Kawepo who were his opponents.[59] Renata Kawepo, Noa Huke, Karaitiana Te Rango, Retimana Te Rango, Ihakara Te Raro, Horima Paerau, and Te Hira [Oke] signed a lease of the Owhaoko lands with Maney which was later transferred to Studholme.[60]

105. Horima Te Paerau, Noa Huke and Renata Kawepo opposed Winiata and his whakapapa of Tauke and Puanau to keep him and his people out of Owhaoko and the lands they were leasing to Birch and Studholme. These lands were protected by the Owhaoko and Oruamatua-Kaimanawa Reinvestigation of Title Act 1886.

106. During the 1890/91 Awarua Partition Fraser questioned Winiata on why he said in the Mangaohane investigation that he had no claims north of the Mangaohane stream. Winiata explained that he was under the impression that the land north of the Mangaohane stream was part of the Owhaoko lands and it was land that Renata and Noa were leasing. He said he still believed that part was of Owhaoko.[61]

1888 Owhaoko Partition and Re-Hearing

107. Following the 1887, title investigation Winiata Te Whaaro applied for a rehearing of the case based upon his ancestral and occupational right.[62]

108. The Chief Judge referred the application of Winiata for a rehearing to Judge Wilson. Wilson disputed the issues raised in the application advising the Chief Judge that Winiata Te Whaaro had claimed the land ancestrally through Puanau (of Ngāti Tama, Ngāti Whiti and Ngāti Hauiti) a female relative who married out of her hapū (Ngāti Whiti) to live with her husband a Ngāti Hinemanu therefore denying him of that

[59] Wai 2180, #A52, *Ngāti Hinemanu and Ngāti Paki Oral and Traditional Report, Peter McBurney*, at 286.
[60] Wai 2180, #A6 at 36-37.
[61] Wai 2180, #A52, *Ngāti Hinemanu and Ngāti Paki Oral and Traditional Report*, Peter McBurney at 290-291.
[62] Wai 2180, #A52, *Ngāti Hinemanu and Ngāti Paki Oral and Traditional Report*, Peter McBurney at 55.

whakapapa connection to Ngāti Whiti.[63] At the onset of the 1888 rehearing, Ngāti Whiti again accepted the list of names that Winiata Te Whaaro submitted for inclusion with them but by the time their case was closing they again rejected his list of names.[64]

109. During the rehearing, the Court decides that Punakiao (mother of Hinemanu) hadn't lost her rights to the lands through her marriage to Taraia 2nd as well as the right of Aopupurangi who married Honomokai and they then admit Ngāti Honomokai, Ngāti Upokoiri, Ngāti Hinemanu, Renata and Airini into the Owhaoko C block. [65] The main witness for what had been the claim of Renata Kawepo, Paramena Te Naonao, supported Te Whaaro to join their group as well. It was specifically stated that Winiata Te Whaaro and his 11 children also had rights in the land.[66] Although these claimants supported Winiata Te Whaaro, he was not awarded interests in Owhaoko C. The Court rejected all of Winiata Te Whaaro's claims and stated that 1,000 acres as "an ample appropriation on their behalf". Out of 100,000 acres Winiata Te Whaaro and his party were awarded 1,000 acres in Owhaoko D out of **'aroha'**.[67] This being for services rendered not because he had an ancestral right.

110. Te Whaaro declined to accept their offer and he maintained at the 1893 partition that he was still entitled to a larger portion. He argued that the name of Ngāti Whiti was not used exclusively by the descendants of Wharepurakau as it was also used by the descendants of Irokino.[68]

111. To Winiata Te Whaaro, he should have been included in the lands based upon his ancestral rights. With the NLC denying Winiata his whakapapa and ancestral rights to his lands, the notion of **'aroha'** to admit him into lands follow him in the Awarua partition. His

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[63] Wai 2180, #A52, *Ngāti Hinemanu and Ngāti Paki Oral and Traditional Report*, Peter McBurney at 56.
[64] Wai 2180, #A6, *Northern Block History, Martin Fisher & Bruce Stirling* at 66.
[65] Wai 2180, #A6, *Northern Block History, Martin Fisher & Bruce Stirling* at 79
[66] Wai 2180, #A6, *Northern Block History, Martin Fisher & Bruce Stirling* at 59.
[67] Wai 2180, #A6, *Northern Block History, Martin Fisher & Bruce Stirling* at 59.
[68] Wai 2180, #A6, *Northern Block History, Martin Fisher & Bruce Stirling*, at 67.

whakapapa rights to Tauke and Puanau were also denied, and he is once again admitted into what is seen to be somebody else's lands through **'aroha'** and not through his own ancestral right.

1890/91 Awarua Partition Hearing

112. In reference to the point already made above (in response to para [100] of the Crown submissions), during the Awarua Partition hearing in 1890 – 189, Winiata Te Whaaro claimed as: Ngāti Te Ohuake, Ngāti Whiti, Ngāti Hauiti, Ngāti Hinemanu, Ngāti Paki, Ngāti Te Ngahoa**,** Ngāti Kautere, Ngāti Te Ngaruru, Ngāti Rangi. The case of Winiata was based upon ancestry and occupation. The tīpuna he claimed through were Te Ohuake, Whitikaupeka and Hauiti. The claim was over the entire block.[69] After months of deliberation the Court proceeded to subdivide the block into nine titles based loosely on the four original subdivisions.[70] Winiata Te Whaaro claimed in the No 1, 2, 3 and 4 blocks from his ancestors Te Ohuake, Whiti and Hauiti.[71]

Judgement

113. The Court found that the descendants of Te Ngahoa and of Tukokoki (sons of Hinemanu and Tautahi) had no rights by occupation on the block west of the Rangitikei River and it was found that Winiata Te Whaaro had not proved satisfactorily any connection with the ancestors of Ngāti Hauiti and Ngāti Whiti except through Te Ngahoa so he and his descendants were seen to have no rights west of the Rangitikei river – however, Utiku Potaka the leading chief of Hauiti, admitted that Te Whaaro and his party into the Ngāti Hauiti lands through 'aroha'.[72]

114. The Court was not satisfied that Tauke was a child of Whitikaupeka and Haumoetahanga – so could not see a way to enrol the names of Utiku Potaka and his party on the lists of owners of Ngāti Whiti lands on the

[69] Wai 2180, #A6, *Northern Block History, Martin Fisher & Bruce Stirling* at 83
[70] Wai 2180, #A3 at 393.
[71] Wai 2180, Document Bank Project, Māori Land Court Minutes Vol 3, WG 20 at 224.
[72] Wai 2180, #A8 at 84.

west side of the Rangitikei River. During the Awarua partition hearings, Fraser cross examined Winiata Te Whaaro on Tauke being a child of Whitikaupeka. Te Whaaro replied that all the people know that Tauke is a child of Whitikaupeka but they are hiding it.

Awarua 1:[73] *(East Side of the Rangitikei River)*

115. Winiata Te Whaaro and his hapū of Ngāti Paki were awarded 150 interests out of 800 interests. The Court then decided that even though the 1891 subdivision and awarding of interests was generally fair and equitable, it then considered that in a few cases the contrast between the largest and smallest shares awarded "was very great" so it decided to increase the shares of some applicants. The additional interests were deducted from some of those with larger shareholdings.[74] Winiata Te Whaaro and his party of Ngāti Paki lost 13 ½ interests. They became the biggest sufferers of the Courts idea of a more balanced distribution of interests. Not only did they lose some of what they were awarded in the 1891 Awarua No 1 lands, it also came on the back of losing their interests to Mangaohane (that boundaries onto the Awarua No 1) through the courts bumbling and the government's failure to remedy it.[75]

Awarua 4 (Whakauae)[76] *(West side of the Rangitikei River)*

116. Utiku Potaka of Ngāti Hauiti (admitted Winiata Te Whaaro and his Ngāti Paki hapū through 'aroha') and Ngāti Haukaha (320 interests). Those of Ngāti Whiti-Hauiti descended from Te Kotuku and Te Oriotepo (80 interests)

Awarua Subdivision 4[77]

[73] Wai 2180, #A8 at 85.
[74] Wai 2180, #A43 at 406.
[75] Wai 2180, #A43 at 407.
[76] Wai 2180, #A43 at 407.
[77] Wai 2180, #A43 at 389.

117. It is shown here that although Winiata has a whakapapa connection through Ngahoa to Hauiti. The Court continued to deny him his ancestral rights in these lands and yet allowed Paramena Te Naonao Rora Te Oiroa and others their ancestral rights through Te Ngahoa in the same lands west of the Rangitikei River. The years of litigation over the Pokopoko lands at Mangaohane and other NLC land investigations in the Taihape District left Winiata Te Whaaro and his hapū of Ngāti Paki and Ngāti Hinemanu virtually landless. Mr Jordan Winiata-Haines pointed out in his brief of evidence; the alienation of the whole of the Awarua Block under legislation and then the ongoing taking of Awarua lands through Acts of Parliament had a huge impact upon Ngāti Hinemanu and Ngāti Paki.[78]

1894 Oruamatua-Kaimanawa Title Rehearing:[79]

118. At para [307], the Crown begin an analysis on the Owhaoko and Oruamatua Kaimanawa lands which we say is significant to the claims made by the Clamaints. The Claimants make the following submissions in relation to the Oruamatua-Kaimanawa Title Rehearing. Winiata Te Whaaro was represented in the 1894 Oruamatua-Kaimanawa investigation by Tamati Tautuhi. The Claimants in their opening prima facia case gave the same rights as they set up in the Awarua case. Winiata Te Whaaro saw that this would affect his case based upon the previous Owhaoko and the Awarua Land Court Judgements that previously went against him. Following a discussion between Winiata Te Whaaro and Tamati Tautuhi his representative, Tamati Tautuhi told the Court that Winiata Te Whaaro was withdrawing his case based upon the subsequent matters. Te Whaaro referred to the 1887 Owhaoko Sub-Division Judgement and other previously held land court Judgements such as the Mangaohane and Awarua where his whakapapa was rejected by the Courts.

[78] Wai 2180, #J16, Brief of Evidence of Jordan Winiata-Haines at 12.
[79] Wai 2180, #G14, Brief of Evidence Lewis Winiata at 5-7.

119. In the 1888 Owhaoko hearing, the Court held that they would not admit Winiata Te Whaaro as a Ngāti Whiti however they would admit him only of Ngāti Whiti would admit him through what they termed ‘aroha’. The notion of ‘aroha’ to Winiata had nothing to do with the meaning of the word as it was suggesting that there was no separate underlying entitlement rising from his own Mana.

120. Winiata Te Whaaro realised that former judgements made by the Native Land Court in the Owhaoko and Awarua cases couldn’t be removed and he referred to them as being: *“like clouds on a mountain’* meaning that he couldn’t see his way clear to go on with his case in the 1894 Oruamatua-Kaimanawa block hearings. The denial and dismantling of his ancestral whakapapa in the Owhaoko and other blocks had a definite link to the reason that Winiata Te Whaaro withdrew his case from the Oruamatua-Kaimanawa hearing in 1894.

121. With the first Title hearing of the Oruamatua-Kaimanawa block occurring in 1875 being finalised at its re-hearing in 1894 (almost 20 years later) we can see that the blocks in the northern and central territory of the inquiry district had a long history of hearings, rehearing’s and litigation that certainly wasn't helpful to the final outcomes for Winiata Te Whaaro and his hapū in not only this case but others as well.

Te Koau Lands

122. The Crown refers to the Te Koau Block from para [273]. The Claimants say that it was only after sustained challenges by Winiata Te Whaaro and others that the Otaranga deed was investigate by a commission of inquiry in 1890.[80] The outcome was that the Commission found that the Te Koau block had not been included in the Otaranga deed however the Crown had wrongly alienated 7,100 acres. The Te Koau land has been plagued with discrepancies since being alienated through legislation by

[80] Wai 2180, #A8 Sub-district block study – Central Aspect: Evald Subasic & Bruce Stirling at 17.

the Crown in the late 1870's. Title to Te Koau of 10,240 acres (from original 17,340 acres) was investigated in September 1900 with a view to establish the individuals to whom payment was to be made for 7,100 acres wrongly alienated by the Crown.[81] The land was claimed by Ngāti Hinemanu and others and was awarded to those claiming through Hinemanu.[82] A full account on the Te Koau lands and how they have affected Ngāti Hinemanu and Winiata Te Whaaro has been provided in a the Claimant specific closing submissions.

Timahanga Lands:

123. At para [285] of the Crown submissions, the Crown state that of the 20 blocks that were subject to the Court process, 16 were brought before the Court prior to 1890. In the majority of cases – 14 out of the 20 blocks that passed through the Court – title was determined through a single but sometimes lengthy Court hearing.

124. At para [288] of the Crown submissions, it is stated that five blocks arose through some form of remedial action following definitional issues including Te Koau 1891 and Timahanga 1894. They arose through lack of clarity with the Eastern boundary and early Hawkes Bay purchases after the findings of the Awarua Commission 1890.

125. The Timahanga Block was sold as part of the Ngaruroro block in 1855. This was the one reason for the delay in having a title determined. It was not until the Awarua Commission of Inquiry that the Crown accepted it had no valid claim to Timahanga. Parts of the Timahanga block boundary onto the Te Koau block in the south and part of the Owhaoko block in the north.[83]

126. The Timahanga block (21,388 acres) went before the Native Land Court for title in 1894. Ngāti Hinemanu were one of the counter claimants.

[81] Wai 2180, #A8 Sub-district block study – Central Aspect: Evald Subasic & Bruce Stirling at 17.
[82] Wai 2180, #A8 Sub-district block study – Central Aspect: Evald Subasic & Bruce Stirling at 13.
[83] Wai 2180, Ngāti Hinemanu me Ngāti Paki ASOC, Annette Sykes & Co at 25.

The Court favoured those people from the pā on the eastern side of the Ngaruroro who they say were closer to the block. The Court rejected their claim based on the evidence of Noa Huke who said that he disclaimed any right of Hinemanu east of the Taruarau stream.[84] The block was partitioned into 6 blocks in the early 1900's and 5 (a total of 19,300 acres) of the 6 blocks were acquired by the Crown the last block being acquired in 1915. One block (2,088 acres) remains in Māori ownership today.[85]

Summary

127. Ngāti Hinemanu, Ngāti Paki, Winiata te Whaaro and his whānau were stripped of almost all of their lands by the instruments, policies and practices of the Native Land Court and the Crown. The following are statements by Mr Jordan Winiata-Haines on how the Native Land Court impacted Ngāti Hinemanu, Ngāti Paki, Winiata Te Whaaro and his whānau:[86]

    a. *The land was taken so fast. It was virtually ripped out from under us through a variety of mechanisms to the point that it crippled our people.*

    b. *… it becomes very clear that the policies and procedures of the Crown were so burdensome that our people suffered debt through a number of ways to the extent that they were forced to sell their lands to cover that debt;*

    c. *With the alienation from our land went our economic base, our history and whakapapa. It affected us culturally and economically;*

    d. *Our whakapapa became divided when the land was divided. We lost our resources, our access to our rivers, wāhi tapu, pā and*

[84] Wai 2180, Ngāti Hinemanu me Ngāti Paki ASOC, Annette Sykes & Co at 25.
[85] Wai 2180, Ngāti Hinemanu me Ngāti Paki ASOC, Annette Sykes & Co at 25.
[86] Wai 2180, #J16 Brief of Evidence of Jordan Haines-Winiata at 12-14.

kainga. We are no longer the kaitiaki over our lands. Others are making decisions on how those lands should be managed.

128. The following are statements by Mr Lewis Winiata of how the Native Land Court impacted upon Ngāti Hinemanu, Ngāti Paki, Winiata Te Whaaro and his whānau:[87]

a. *Because of the tactics of the Native Land Court during these times followed Winiata throughout all the land court hearings in the district it is important for me to raise them right at the beginning of the Block hearings so as the kōrero and the thrust of what happened to the whakapapa of my tūpuna Winiata Te Whaaro doesn't get lost;*

b. *…the Crown set the Native Land Court up to individualize title without recognising the many lines of descent that our tūpuna could claim through;*

c. *The role of the Native Land Court was not to recognize the sacredness or tapu of whakapapa, but it was to individualise title for settlers to lease and purchase. If that meant destroying ones whakapapa, then that's what they did;*

d. *The impact that this had upon the mana and rangatiratanga of my great grandfather Winiata Te Whaaro was significant.*

e. *We as his descendants have suffered these outcomes right through to today in countless ways since the times of the Native Land Court;*

f. *The outcome of the Mangaohane and the Awarua Block hearings had a huge bearing in the denial of the whakapapa of Winiata Te Whaaro and his party with impacts on the allocation of rightful customary interests in the Owhaoko and Oruamatua-Kaimanawa lands;*

[87] Wai 2180, #G14 Brief of Evidence of Lewis Winiata at 3-4 and 17.

g. *As Winiata Te Whaaro said in the Owhaoko 1888 Rehearing when the Courts continued to deny his whakapapa links, "What Māori person is confined to only one line of descent?";*

h. *The shame of what happened to him in the Native Land Court is carried by us all. The denial of our key ancestral turangawaewae is like leaving us suspended in our terrirories with nowhere to find a place for our feet to stand upon;*

i. *We lost out language just as fast as we lost our land. Our Wairua has been affected by these loses. When you look at it like that you could say that we are culturally and spiritually unwell.*

CROWN PURCHASING

129. The largest loss of the Claimants' whenua followed the imposition of the Native Land Court. Crown purchasing tactics formed a considerable part of the Crown's arsenal to acquire extensive amounts of the Claimants lands. These processes were designed to suppress rangatiratanga, kawa and tikanga and demonstrate the Crown's failure to adequately protect Ngāti Hinemanu me Ngāti Paki land and resources.

130. Counsel adopt the generic submissions in reply on this issue.

131. The Crown purchased substantial areas of Ngāti Hinemanu and Ngāti Paki's lands using purchasing techniques which were coercive, unfair and disadvantageous to Ngāti Hinemanu and Ngāti Paki, and purchased land at less than market values, Crown protection mechanisms were inadequate.

ECONOMIC DEVELOPMENT AND CAPABILITY

132. We endorse and adopt the generic submissions in reply on the questions of how the economic development and capacity and capability of Taihape Māori were impacted upon in breach of Te Tiriti.

ARREST AND EVICTION OF WINIATA TE WHAARO AND DESTRUCTION OF POKOPOKO

Introduction

133. This section is in reply to the Crowns closing submissions on Issue 6: Arrest and Eviction of Winiata Te Whaaro and destruction of Pokopoko.

134. One overarching issue is the Crown's focus on Ngāti Hinemanu and Ngāti Paki ("NHNP") exclusively, which the Claimants say, leads the Crown into some basic errors about customary interests at Pokopoko and points south. A related critical issue is the significant error on the part of the Crown in defining the southern boundary in relation to Pokopoko. The Crowns closing submissions on Issue 6 show it still doesn't understand that issue and its ramifications, not only for how the block was defined but how customary interests had to be defined in relation to an incorrect boundary (and, as noted, they don't understand the customary interests either). This is discussed further below.

135. The Crown acknowledgement at [4] and [142] distorts the issue; NHNP's grievance is barely acknowledged, and there is no acceptance of the Crown's culpability for that grievance.

136. The Crown acknowledgement at [5] has nothing do with Mangaohāne or even Taihape, and simply repeats the standard Crown acknowledgement, that have already been noted in Wai 2180, #3.3.376(c) at [36]-[37].

137. When the Crown tries to be more specific at para [8.2], it reduces the enormous damage it did to NHNP at Pokopoko to the admitting nothing more than having 'significantly damaged some of the relationships between Winiata Te Whaaro and some of his whanaunga and contributed to tribal structures being undermined or altered'. Utterly inadequate and heavily qualified weasel words.

138. Assertion at [6] misses the point: it's not about what might have happened IF the Crown hadn't breached the Treaty, it's about what happened because the Crown did breach the Treaty. Let's focus on that shall we?

139. The acknowledgement at [7] is more helpful, and is expanded on in [65]-[67].

> 8.1 Crown acknowledgement at on survey issues is inadequate; its actions in approving a survey against its own best advice led to violent conflict, and its actions resulted in an inadequate sketch plan that underpinned ALL the consequent confusion and disputing over the inclusion or exclusion of Pokopoko and other NHNP interests in Mangaohane. (Compare to [36]-[37], which is better.) All its prepared to acknowledge is that it 'contributed' to a titling delay that then 'contributed' to the complexity of litigation. More utterly inadequate weasel words.

140. Continuing with para [8] (from [8.3] to [8.13]) acknowledges facts about Pokopoko which NHNP say shows that the Crown fails to accept any responsibility for any of these facts. What is the point of merely recording undeniable facts while neglecting to accept responsibility for the outcome?

Victim Blaming of Winiata Te Whaaro

141. At footnote [6] of the Crown submissions, the Crown provided an example where Winiata purportedly says that Ngāti Hinemanu had no claim south of Mangaohāne stream. The Claimants say that the Crown continues to rely on what NLC said, as cited by Young,[88] but this has already been disproved as set out in the Claimant closing submissions.

142. The Claimants say that the Judges had conflated Hinemanu the tipuna with Ngāti Hinemanu the tribe, leading them into a significant and telling error regarding the customary rights of Winiata Te Whaaro and his people at Mangaohāne, which were not entirely derived from Hinemanu. What Winiata Te Whaaro told the Court was:

[88] Wai 2180, #A39 at [177]-[178].

> "I said that I was a descendant of Hinemanu but she has no right to the land south of Mangaohane Stream, Rangiwhakamatuku is the proper ancestor for that land." (9 NAPIER 236)

143. This does not mean Winiata Te Whaaro and his people had no rights south of the Mangaohāne Stream; merely that their rights there were as Ngāti Paki, being derived, as he stated, from Rangiwhakamatuku (a son of Nukuteaio and of Te Ohuake, who was brother to Tutemohuta who in turn was grandfather to Hinemanu).[89]

144. In response to paragraphs [49]-[50] of the Crowns submissions, NHNP continue to say that the Crown continues to mislead the Tribunal by citing different statements by or about Winiata Te Whaaro relating to Hinemanu's claims when it is clear from the quote above what he meant.

145. NHNP also believe that it is noteworthy that the Crown has invented a quote it attributes Winiata Te Whaaro, sourcing this to Young.[90] This is not supported by the reference given in the Crowns submissions or anywhere else in the Report by Young.

146. Based in part on this invented quote, and by ignoring the quote given above, the Crown at [51] tries to place blame on Winiata Te Whaaro for being his own worst enemy. It focuses on the Hinemanu red herring while ignoring the core issue of the defective survey and the 1885 Court's intent to exclude Pokopoko and the area to the south. Not to mention the matter of Ngāti Paki.

147. In footnote 16 of the Crowns submissions, the Crown asserts Owhaoko lease included Mangaohāne, but the reference given does not support this.

148. Furthermore, the reference given at footnote 17 of the Crown submissions does not support what the Crown asserts.

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[89] Wai 2180, #A52 at 78-79, 87, 90, 97-99, and 119; see also Wai 2180 Affidavit of Lewis Haines Winiata cited at 265-266.
[90] Wai 2180 Crown Closing Submissions on Issue 3 Native Land Court, fn 83.

149. The Crown says Winiata Te Whaaro gathered food from Mangaohāne seasonally. That implies his rights by occupation were limited but what the Crown fails to state is that all customary use on Mangaohāne was seasonal; for obvious climatic and resource reasons, it was not a place of permanent occupation for anyone.[91]

150. Crown implies Winiata Te Whaaro is slippery when it states that "his relationships and affiliations shifted over time". That is partly false and partly facile: everyone's relationships shift over time (facile), but NHNP say that it is false to say that his affiliations shifted over time. Affiliations are based on whakapapa so they cannot 'shift'; what does change is how whakapapa is expressed in relation to particular lands on particular issues at particular times. The Crown goes on at para [7] about fluid customary rights but appears to be ignorant of them at para [19].

151. In response to para [24.1], NHNP says that the Crowns assertion is questionable. The Crown says the Pokopoko settlement established as late as 1882, but then at footnote 34, the Crown relies on secondary sources which go only as last as 1880. The primary sources, Winiata Te Whaaro himself, cited by Luiten says 1877. NHNP questions where the year 1882 came from. NHNP also believe that the Crown is merely trying to diminish the significance of Pokopoko by claiming that people were there only a few months before the trouble over the survey began in 1880, which they say stretches the truth beyond breaking point.[92]

152. The Crown refers to the Mangaohane 2 title investigation as 'exhaustive'. However, the Crown has failed to even identify the obvious NHNP customary interests, so not very exhaustive.

153. NHNP are not necessarily asking the Tribunal to 'second-guess' the NLC; the NLC in the Mangaohāne case has already been second-guessed by itself and higher courts, which found it made errors.

[91] Wai 2180, #A6 at 179, 180-181, 183, and 185. See also NLC Judge cited in Wai 2180, #A39 in quote at [79].
[92] At para [24.2].

However, NHNP maintain their position that the Crown failed to provide a legislative solution to those errors (as Crown admits at para [8.4] and [8.6] in the Crown submissions).

154. NHNP is confused at para [32.2] of the Crown submissions. NHNP is confused at how a rehearing application can 'find' Pokopoko to be included and then go on to say that all parties knew. The report of CJNLC on the application did not find this. In fact, Winiata Te Whaaro's application in 1885 noted 'the whole block was not dealt with' as Pokopoko and land to the south was excluded, and CJNLC accepted this while denying the exclusion was an issue.[93]

155. At para [34], the Crown claims the survey was not opposed and the contest was only over whose survey would prevail. NHNP continue to say that this is incorrect and says the Crown distorts the time period being considered to suit itself by taking it out to 1883, but the critical period is 1880-81. That is when the Crown was clearly advised in 1880 by its own officer (Booth) it was not safe to make the survey, and this advice was repeated in 1881. The Crown ignored this leading to violent opposition to the survey, which as a result was defective from the outset. This is set out in the Claimant closing submissions.[94]

156. There is a map referred to at the end of para [38][95] which was referred to as the plan present in Court in 1884-85. However, NHNP says that the Judge said very clearly that it was not the plan he saw, and his clerk confirmed this.[96] There is no point in starting with the wrong plan and expecting the right answer. This goes to the heart of the Crown's failure in the 19th century as well as its continued failure today to acknowledge the mistakes it made then and its culpability now.

157. At para [52.1], the Crown says that the Courts could later rely only on the 1884 evidence however, the Court itself excluded the area south of

[93] Wai 2180, #A39 at [92].
[94] Wai 2180, #3.3.76(c) at [53]-[57].
[95] ML633
[96] Wai 2180, #3.3.76(c) at [62]-[63]).

Pokopoko from its 1885 decision and said it needed to be "the subject of a future investigation".[97] The Claimants say that the CJNLC was right to hear more evidence and find that Winiata Te Whaaro did have ownership.

158. This is also relevant to the Crowns point at [94], as Butler is clearly wrong to say that it was Winiata Te Whaaro's fault for not putting his best evidence in 1884, when the Court itself admitted it needed to hear his evidence on the southern part of Mangaohāne which it tried to exclude from its award.

159. In response to para [53], Luiten explains it for the Crown (Winiata Te Whaaro thought Pokopoko was excluded) and the Crown then incorrectly assumes Winiata Te Whaaro would have claimed Pokopoko through Hinemanu anyway. The Crown repeats this error in para [54]. To add to the points already raised in these reply submissions, the Claimants reiterate that Winiata Te Whaaro had already said the claim south of Pokopoko was not through Hinemanu.

160. In response to para [86], NHNP say that the Crown simply cannot continue to rely on Morison's strategic legal error about the Pokopoko boundary. The CJNLC in 1892 and the NLC in 1893 was very clear that the southern part of Mangaohāne was excluded from the 1885 judgment, was incorrectly included in the 1886 survey, which NHNP staunchly resisted, and the title issued as a result (also strongly opposed by NHNP).[98] This error was also noted by CJNLC in 1894.[99] The Crown failed to act to correct the error in a survey it had authority over approving.

161. At para [89], the Crown claims that O'Brien changed his mind about the boundary between 1885 and 1892. NHNP say that he did not; he changed his mind about the validity of Winiata Te Whaaro's claim and agreed it was valid. It is very clear from the quote included by the

[97] Wai 2180, #3.3.76(c) at [60])
[98] Wai 2180, #3.3.76(c) at [67]-[69] and [76]-[77].
[99] Wai 2180, #A39 at [459].

Crown that he is referring to Winiata Te Whaaro's claim, not the southern boundary. Counsel also wish to note that the Crown makes reference to the wrong page from Wai 2180, #A39; it refers to p.129 (which is where O'Brien confirms the boundary error as noted in 1885) but the quote it gives in para [89] is from p.130, where the matter being discussed is Winiata's claims in Mangaohāne, not the survey error.

162. The Crown continues on at para [90] and assumes that O'Brien has changed his mind back again to his 1885 stance, but misreads the evidence. First, as noted above, he had not changed his mind in 1892. Second, O'Brien's inadmissible statement was submitted by Studholme's lawyer (not Winiata Te Whaaro's) . NHNP say that what O'Brien was saying in 1894/95 was favourable to Studholme. That can only mean he had changed his mind on the boundary in Studholme's favour but, as CJNLC said, this contradicted what O'Brien said in 1885.

163. At para [105.3], the Crown doth protest too much over claims the 1892 Act was intended to benefit the influential Studholme (see also paragraphs [106]-[107]). First, the Crown ignores the report of the Native Affairs Committee that was strongly in support of Studholme.[100] The day the Committee reported it proposed an amendment to the 1892 Bill (then being debated) to protect his position.

164. As the Crown notes, this was rejected but what the Crown fails to note is that in rejecting the amendment, Carroll made it very clear that it wished to protect Studholme's interests. The amendment was effectively on hold until the next Session, when a similar provision could be made if it was needed to protect Studholme's interests.[101]

165. The point is not that the Crown changed the law to give Studholme an advantage over Winiata Te Whaaro; the point is that it would do so if it needed to. In the end, it didn't need to because the NLC, in hearing

[100] Wai 2180, #3.3.76(c) at [123].
[101] Wai 2180, #3.3.376(c) at [124].

Rena Maikuku's appeal, was framed to exclude almost everyone.[102] However, NHNP argues that the point still stands.

166. The Crown even claims it made special provision for Winiata Te Whaaro, which the Claimants say is misleading. The provision referred to is in an 1893 Act (passed in October 1893), which the Claimants say is irrelevant to the 1892 Act at issue in para [105.3].[103] Counsel also wish to note also that the 1893 Act clause arose out of an agreement among counsel related to another case (being that of Noa Te Hianga and eight others v. Airini (and 66 others) and the NLC) rather than anything to do with Winiata Te Whaaro himself.[104]

167. TWENTIETH CENTURY LAND USE, MANAGEMENT AND ALIENATION

LAND BOARDS AND THE NATIVE/MĀORI TRUSTEE

168. This section is in reply to the Crowns closing submissions on Issue 7 regarding Native Townships.

169. Counsel adopt the generic submissions in reply on this issue.

NATIVE TOWNSHIPS

Generic Submissions

170. This section is in reply to the Crowns closing submissions on Issue 8 regarding Native Townships.

171. We adopt the generics reply submissions regarding Native Townships that have been submitted for Issue 7 for Ngāti Hinemanu me Ngāti Paki.

GIFTING OF LAND FOR SOLDIER SETTLEMENT

172. This section is in reply to the Crowns closing submissions on Issue 9 regarding the gifting of land for soldier settlement.

[102] Wai 2180, #A39 at [371]-[377].
[103] Wai 2180, #A39 at [354].
[104] Wai 2180, #A39 at [407].

173. We adopt the generics submissions in reply regarding the gifting of land for soldier settlement that have been submitted for Issue 8 for Ngāti Hinemanu me Ngāti Paki.

LOCAL GOVERNMENT AND RATING

174. This section is in reply to the Crowns closing submissions on Issue 10 regarding local Government and rating.

175. Counsel adopt the generic submissions in reply in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki.

TWENTIETH CENTURY LAND ALIENATION

176. This section is in reply to the Crowns closing submissions on Issue 12.

177. Counsel adopt the generic submissions in reply in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki.

178. PUBLIC WORKS GENERAL TAKINGS (ROADS, SCENERY RESERVATION AND OTHER PURPOSES)

NORTH ISLAND MAIN TRUNK RAILWAY

179. This section is in reply to the Crowns closing submissions on Issue 14.

180. Counsel adopt the generic submissions in reply in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki.

WAIŌURU DEFENCE LANDS

Generic Submissions

181. This section is in reply to the Crowns closing submissions on Issue 15.

182. We adopt the generics submissions in reply regarding Public Works takings that have been submitted for Issue 15. This was a significant

issue for the Hoet whānau (Wai 1868) and wish the following submissions in addition.

183. The Crown submissions at para [28] starts a discussion on the 1961 Defence Lands takings and compensation. The Claimants say that compensation was directly negotiated with European owners and compensation payable for Māori owners assessed by the Māori Land Court was not negotiated directly with the owners.

184. The Claimants make further comments in relation to the Oruamatua 2Q1 and 2Q2 land blocks. The Crown has all but avoided even mentioning the two blocks of lands and yet that is what the Wai 1868 is all about.

185. At [39.3] of the Crown submissions, the Crown states that there was full and genuine consultation with Māori owners. However, there is no evidence to show that the Crown knew who the owners were of Oruamatua 2Q1 and 2Q2 at the meeting of owners held in Tokaanu on 29 September 1950.

186. The Crown also states at para [39.4] that the land is still being used for which it was acquired for. The Claimants are disappointed with this and ask why the land at Oruamatua Kaimanawa 2Q1 of 1,516a 0r 00p is leased to Ohinewairua Station.[105]

ENVIRONMENT

MANAGEMENT OF LAND, WATER AND OTHER RESOURCES

ISSUE 16A: LAND

187. This section is in reply to the Crowns closing submissions on Issue 16A Environment (Land).

188. The Claimant's position on the management of land and waterways has been made clear from the beginning of these inquiries; the land and waterways are to be viewed as taonga and Crown have breached their

[105] Wai 2180, #A09 at 74.

duty contained under Article II of Te Tiriti by failing to actively protect this taonga. There have been further breaches but central to these submissions are the effects of Crown practice and policy on the relationship that Ngāti Hinemaru me Ngāti Paki have with the environment within their rohe.

189. As the whakataukī reminds: He oranga whenua, he oranga tangata – the health of the people is reflected in the health of the land. In this respect, we remind the Court of that which was made in claimant closing submissions. Both Tangata and technical evidence have shown that:

    a) Waterways have been polluted;

    b) Traditional food resources such as tuna are endangered; and

    c) Ngāti Hinemanu me Ngāti Paki health and well-being has suffered as a result.

190. The Crown's failure to protect taonga within the Taihape district have residually affected the health and well-being of Ngāti Hinemanu and Ngāti Paki. We therefore invite the tribunal to ensure that along with the health of the land and waterways, its improvement shall be considered with regards to the health and well-being of Ngāti Hinemaru and Ngāti Paki.

191. In its submissions, the Crown have acknowledged that they have a duty to actively protect taonga.[106] Furthermore, they have a responsibility to ensure, under Article III, that policy and practice equally apply to Māori and non-Māori.[107] On this basis it was submitted that:[108]

> *Management of the environment is a legitimate governance and regulatory function of the Crown. Kāwanatanga means it is appropriate for the Crown to develop nationally focused regimes for the protection and management of the environment and natural resources, including waterways.*

[106] Wai 2180, #3.3.85 at [16].
[107] Wai 2180, #3.3.85 at [17].
[108] Wai 2180, #3.3.85 at [18].

192. This position then affords them the responsibility of ensuring that practice and policy are consistent with Māori rights and their views therein are captured. However, the issue in its application is the Crown unilaterally imposing its own environmental management systems which are sourced in Western environmental understandings - exploitation for commercial benefit. We have submitted that Crown environmental management systems do not reflect traditional values and undermines the Claimants' ability to exercise mana, rangatiratanga and kaitiakitanga over their environmental resources. [109]

193. To avoid the responsibility of taonga protection, the Crown have invited the tribunal to accept their proposition that the environment as a whole is not taonga[110] - this argument being promoted on the basis that there has been limited evidence put forward by the claimants[111] and that there have been previous tribunal findings which suggest that the Te Tai Ao ought not to be taonga.[112] This dubious approach has been formulated to deny responsibility for failure to protect taonga or to keep abreast with the fact of climate change impacts on the ecosystem as a whole in the Taihape region which have the propensity to impact upon if not destroy the ways of life of Ngāti Hinemanu and Ngāti Paki .

194. By way of Memorandum of Direction, the Judge directed counsel to augment oral submissions with respect to developing jurisprudence which suggest that there is a body of thought that confirms that the environment is a taonga.[113] We maintain the position held within those submissions. To enunciate this position it is imperative to draw on early tribunal understandings of taonga. In the *Petroleum Report* it was said that:[114]

> *Though the term has a number of other more mundane meanings, successive carefully reasoned reports of the Tribunal over many*

[109] As stated in our closings at [745].
[110] Wai 2180, #3.3.85 at [40].
[111] At [42].
[112] Waitangi Tribunal, *Ko Aotearoa Tēnei* (Wai 262, 2011).
[113] Memoranadum of Directions dated 2 December 2020; our response is on the record as Wai 2180, #3.3.56(c).
[114] Waitangi Tribunal, *The Petroleum Report* (Wai 796, 2003) at 42.

> *years now have come to treat 'taonga', as used in the Treaty, as a tangible or intangible item or matter of special cultural significance.*

195. In *Te Rohe Pōtae,* it was noted that:[115]

> *Whether something can be considered a taonga turns on the evidence of a particular case…*

196. These open-ended definitions of taonga allow an all-inclusive approach as to what Māori determine are taonga within their rohe. Furthermore, it acknowledges that between inquiries, between districts there can be different things acknowledged as being taonga. Within the context of these claims, it is maintained that from the perspective of our clients, the environment, as a whole, is viewed as a taonga.

197. The settlement agreement reached by Tūhoe in their settlement is apposite as it shows the significance of the relationship that they share with the Urewera country. Through the Te Urewera Settlement Act 2014, the landscapes that form Te Urewera have been given legal personality; conferring the same legal rights as a legal person.[116]

198. When considering the environment within a Māori framework, the conferring of legal personality is closest in proximity to Māori understandings. It firstly recognises that the land is a person; something we believe through our acknowledgements of Papatuānuku and Tānemahuta. Furthermore, it ensures that people are bound by laws that ensure respect is given when interacting with the environment.

199. Although our clients have not specifically advocated for their lands or any significant feature therein to be given legal personality, it is this jurisprudence and development of thought that the tribunal must take into consideration. This was the Tūhoe way of ensuring that the environment is viewed as a *taonga* and is integral to the special cultural relationship that the Tūhoe people share with the landscape.

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[115] Waitangi Tribunal, *Te Mana Whatu Ahuru: Te Rohe Pōtae Claims Pre-publication Version Part IV* (Wai 898, 2019) at 319.
[116] Te Urewera Settlement Act 2014, s 11.

200. We remain of the view that while the Wai 262 Waitangi Tribunal did not consider the environment as a whole is a taonga, it is not an unnatural or forced interpretation of the term taonga as expressed in Article 2 of Te Tiriti to be extended to incorporate the interpretation now contended for.

201. The Wai 262 Tribunal explained that "Māori relationships with taonga in the environment – with landforms, waterways, flora and fauna, and so on – are articulated using kinship concepts." [117] We say the same conceptual approach applies when looking at Te Tai Ao as whole with the sum of the interconnected parts being joined in conceptual terms at least in a Māori world view by the fact that the realms of interconnection which are encapsulated by whakapapa are deemed as cementing the relationships of siblings and their continuing obligations to each other and their mother and father Papatuānuku and Ranginui.

202. The idea of a kin relationships with taonga, and the kaitiakitanga obligations that kinship creates, explains why iwi refer to iconic mountains, rivers, lakes, and harbours in the same way that they refer to close human relations, and why kaitiaki obligations exist in relation to Te Tai Ao as a whole.

203. The descendants of Ngāti Hinemanu and Ngāti Paki claim that they are part of the land. Their right to claim redress for the overwhelming devastation caused by Crown action originates from their inextricable link with Papatuānuku and her consort, Ranginui, and all the taonga tuku iho which abound from that union. They are not merely owners of the land. This is a fundamental departure from Western notions of land/people relationships and Descartesian separation, and perhaps serves as the primary point of assertion for the interpretation contended for.

[117] Waitangi Tribunal Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity (Wai 262, 2011) vol 1 at 269.

204. The principle being advocated for recognises the interconnectedness of the environment, the interactions between its parts, and the fact that a Māori World view of taonga requires integration between management and use to avoid adverse effects (including cumulative effects) on the health and well-being of the connected parts of the Te Tai Ao.

205. The claimants assert that the term 'taonga' has a breadth of meaning which is specific to each iwi, and cannot be limited by objective legal definition alone. In this inquiry the breath taking expanse of the lands and waterways that hapū and iwi have adapted their ways of life to care for has been a prominent all encompassing theme of the testimony of the Ngāti Hinemanu and Ngāti Paki claimants.

206. Contrary to the Crown assertion in this particular case, the claimants have pointed to breaches which have threatened and destroyed their taonga, these being:

206.1 The suppression of the Māori language especially in schools and in public. That the Crown had and has a duty to protect the Māori language is well established and so has been placed beyond refute. Ngāti Hinemanu and Ngāti Paki have claimed that, through the loss of their identity and mana, their own particular dialects, and the idiosyncrasies of their reo, have been threatened. The claimants assert that the loss of reo continues to have a detrimental effect on their hapū and iwi.

206.2 The suppression of culture emanating from their tupuna. The exigencies of survival have meant that the preservation of their tikanga has been nigh impossible, especially as various Crown practices have colluded to suppress the knowledge and expression of tikanga of all of their hapū within new constructs to promote treaty settlement outcomes quite disconnected from the whakapapa from which their identity is sourced. This has further weakened the identity of the descendants of Ngāti Hinemanu and

Ngāti Paki. The claimants have argued the need for redress in order to begin reclaiming their tikanga.

206.3 The destruction of philosophies characterising the constituent hapū of Ngāti Hinemanu and Ngāti Paki. Prior to the 1840s Māori were forced to adopt aspects of European technology, with the Crown often assuming a non-interventionist stance. Māori were left to enter into the world of trade, commerce and technology unaided; debt resulted, and the subsequent transfer of customary title into Crown ownership saw the loss of huge tracts of land. Concurrent with this phenomenon was the individualisation of collective iwi Māori and the destruction of Māori tribalism, all with detrimental long-term effects.

206.4 The destruction of the interests inherent in the relationship between the peoples of Ngāti Hinemanu and their fisheries, forests and other resources. The Crown has not properly protected such resources from environmental degradation and in particular the Crown has failed to properly protect the natural waters of their waterways and water sources; the lands; the riverbeds and lakebeds and the interests of the peoples of Ngāti Hinemanu and Ngāti Paki as the guardians of those resources.

207. The claimants have noted with dismay the responses of the Crown, and are aghast that the Crown has yet to recognise as valid the relationship that ngā uri o Ngāti Hinemanu and Ngāti Paki have with their taonga as part of their wider relationship and whakapapa to Papatuānuku and Ranginui. They argue that loss of mana results, and that disdain for tikanga spells ruination for the environment, for whenua, and for all living things within their rohe and Te Tai Ao if a more broader interpretation as is advocated for is not made.

ISSUE 16B: WATERWAYS

208. This section is in reply to the Crown closing submissions on Issue 16B Environment (waterways).[118]

209. The Crown submissions address the waterways-specific questions in Issue 16 and is to be read alongside the submissions on Issue 16, Part A, which outline the Crown's broad position on environmental matters and address the land specific questions in Issue 16.

Generic reply submissions

210. Counsel adopt the generic reply submissions in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki.

Crowns exercise of its authority over the management of waterways, lakes and aquifers

211. In response to para [12], NHNP say that the Crown has an active duty to manage and protect this infers to monitor environment as well as environmental practices. NHNP continue to argue that there has been a lack of monitoring of water quality and of the practices that have caused contamination. To not do so is equivalent to mis-management.

The Marginalisation of the Māori World View

212. In response to paragraphs [13]-[14], NHNP believe that the environment reflects accurately what has been undertaken within te taiao. As kaitiaki of the environment, the interconnectedness of life continues with the birth of new generations and new life species. This paradigm exists in stark contrast to that of the Western conceptual framework, which dictates that man follows a linear path and that one's journey on this path does not affect anything else. The impact of man's activities on nature, hence are not as easily visible. The wai of NHNP

[118] Wai 2180, #3.3.93.

have been defiled by the practices permitted by the Crown who have failed to consult effectively or adequately with the peoples of NHNP with respect to their taonga.

213. By the Crown enacting legislation that takes on a Western Science view only approach means that the other view of this country namely kaitiakitanga and its whole world view has been ignored. Western Science views of protection do not correlate with Māori World view of protection.

Recognition in the Crown's environmental management regime of the mana, tino rangatiratanga and kaitiakitanga of Taihape Māori over waterways and their associated resources

214. At para [18] of the Crown submissions, the Crown does not accept that the absence of consultation requirements during this period was a breach of te Tiriti/the Treaty, as the claimants submit.[119] The Crown acknowledged that the establishment of earlier environmental planning and decision-making regimes probably did not involve what would now be regarded as adequate consultation. The Crown also says that "deference to Māori values" by local authorities was not required under te Tiriti/the Treaty.[120]

215. The Crown also says that management of the environment is a legitimate governance and regulatory function of the Crown. Its kāwanatanga role means it is appropriate for the Crown to develop nationally focussed regimes for the protection and management of the environment and natural resources.[121] NHNP say that the management of the environment is an overarching vision however its enactment requires identifying underlying concepts of what this means within a particular context. These are not well explained or given insight into how this can be achieved.

[119] At [18].
[120] At [18].
[121] At [19].

216. The Crown went on the say in para [20] that the regulatory framework and environmental and resource management policies and processes have been developed to promote consultation and engagement with Māori, increase practical involvement of Māori in resource management, and give significant protection to Māori interests.

217. The Claimants disagree with the Crowns position and say that a fundamental principle of partnership imposes a duty on Tiriti parties to act towards each other reasonably, honourably and in good faith. Furthermore, NHNP have the right to be consulted with in relation to their waterways to ensure their right to effectively protect them. Despite this, NHNP have continuously been invisibilised by Crown processes through the enactment of legislation and policies and have suffered significant prejudice as a result. While some consultation with Māori may have been provided for through legislation, the Crown have overall failed to consult with NHNP on decisions regarding their waterways and to take into account any of their concerns. This has resulted in a breakdown of the autonomy inherent in the descent proclaimed by NHNP.

218. The regulatory framework has not promoted consultation with Māori in general, hence the need to develop better legislation to instruct that engagement with iwi is not voluntary as many Councils have interpreted this.

219. In para [21], the Crown noted in the Crown's submissions on Issue 16, Part A, the Crown considers the RMA strikes an appropriate balance between providing for the needs of economic and social development, conservation, and the protection of other interests in the environment and natural resources, including Māori interests. The Crown says that repeal of the Land Drainage Act 1908, the Soil Conservation and Rivers Control Act 1941 and/or the Local Government Act 1974 is not required for the Crown's environmental management regime for waterways to be consistent with the principles of te Tiriti/the Treaty, as the claimants submit.

220. We emphasise from the outset that even where amendments have been affected by Parliament, there has been little effective recognition or resourcing for iwi and hapū in the processes of local and regional government.

221. In response to para [22] of the Crown submissions, the Claimants say that the NPSFM only allows for Māori values like Te mana o te wai. NHNP say that there is no mandate that Local Government to consult with Māori on this. It has been expressed by Taihape Māori that their views have not been taken into account this is primarily because there is no regulatory framework to allow this to occur.

Participation in decision-making

222. At para [24] of the Crown submissions, the Crown considers Māori participation in decision making in local Government.

223. The Crown acknowledges that the extent of Māori participation in local government processes generally has historically been low and that there may be some systemic aspects to this.[122] The Crown go on to say that over time, the potential for the views of Māori to be considered in decision-making processes has increased significantly.

224. The Claimants reiterate that despite the amendments into the RMA Local Government Act 2002 and the Conservation Act 1987,[123] there has been little effective recognition provision for consideration of Māori views in the processes of local and regional government.

Policies and processes of the Crown and local authorities that have contributed to physical changes of the waterways, lakes and aquifers, including environmental degradation

225. In paragraphs [31]-[35], the Crown acknowledges the claimants raise issues relating to degradation of the environment arising from

[122] At [24.1].
[123] At [24.2].

extensive deforestation, siltation, drainage schemes, introduced weeds and pests, the taking of gravel, farm run-off and other pollution, including the disposing of wastewater into the waterways of the inquiry district.

226. The Crown argue that this issue is a question is one of causation that requires the finding of a causative link between a particular Crown action, omission, or policy and the degradation of waterways complained of.

227. The Crown say that the existence of environmental degradation does not automatically mean there has been a failure by the Crown.

> "Adverse environmental impacts are an inevitable consequence of human development and progress, and some degree of environmental degradation will always occur.[124]
>
> The implementation of water management regimes has not, in itself, caused adverse environmental effects on waterways. As with the environment generally, the health of a waterway is affected by a wide range of factors, not all of which the Crown can control or influence. This makes determining the cause of any particular adverse environmental impact difficult, and attributing responsibility problematic.[125]
>
> Further, the Crown is not necessarily responsible for carrying out the physical activities that might adversely affect a waterway, although it may have responsibility for the particular policies or legislation that permits the activity to occur. Every issue must be considered on a case-by-case basis and in light of the prevailing circumstances, including the state of knowledge and understanding of environmental issues, of the time."[126]

228. In response to these paragraphs, the Claimants say the Crown has not in itself caused damage, instead the Crown has mis-managed. There is no directive to worsen the environment, but neither is there management to do what is required to protect that which includes monitoring and evaluating water quality. The casual link between Crown and degradation is that the Crown has not effectively monitored

[124] At [33].
[125] At [34].
[126] At [35].

degradation and so has allowed it to occur which the Claimants say is negligent.

229. Paragraph [36] states that the "environmental impacts are inevitable consequence of human progress" is an admission that progress is a value that supersedes all others including Māori values.

Issue 16.6: How has the Crown sought to exercise its authority of managing waterways?

230. The Crown has an active duty to manage and protect. It has sought to exercise its authority over waterways in Taihape by creation of local authorities to oversee the management of the environment. By transferring these powers to local authorities it in so doing, has transfered 'the duty to manage and protect' the environment. To manage and protect the environment implies monitoring of the environment as well as mitigatory measures that seek to prevent degradation. To not do so is to equivalate to its mis-management.

231. By the Crown enacting legislation and taking a Common Law and Western Science approach means that the other view of this country namely kaitiakitanga and its world view has been ignored. Western views or Crown views of protection do not align with a Māori world view of kaitiakitanga.

232. Ngāti Hinemanu and Ngāti Paki wish to more effectively manage the protection of their waterways by means of improved monitoring and the creation of more effective regulation. The Crown has failed to do this by allowing local government to discharge untreated sewage into the awa and in essence subsequently monitor "its own breaches". Regulation has allowed councils to issue consents on an individual basis and incrementally (for discharges) without due regard or monitoring of accumulative contamination and its effects. Consequently, the allocation of these resources has impeded their ability to mitigate contaminant and resource allocation effects. In essence, Local Government has become judge and jury for continuing resource

allocation. Taihape Māori question whether this is an effective form of management because it has not protected the environment.

233. By iwi gaining the ability to co-govern with the Regional Authority (as has been successfully demonstrated with various co-governance entities around the country refer to #Wai 2180 Evidence of Puti Wilson) will in effect allow an independent layer of monitoring within regional governance. At present, there are structures for managing the environment but these do not encourage and adequately monitor for the protection of the environment. Neither is Local Government forth comming in introducing RMAS33 Transfer of Powers to enable Taihape Māori the ability to co-govern alongside Regional and District Councils.

POWER DEVELOPMENT SCHEMES

234. This section is in reply to the Crown closing submissions on Issue 17.

235. Counsel adopt the generic submissions in reply in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki.

236. **MATAURANGA MĀORI**

EDUCATION AND SOCIAL SERVICES

237. This section is in reply to the Crown closing submissions on Issue 18.[127]

238. Counsel adopt the generic submissions in reply in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki.

239. Counsel wish to make further comments in response to the Crown submissions.

240. At para [9] of the Crown submissions, the Crown stated:

[127] Wai 2180, #3.3.87.

[9]. Whilst the Crown's position is that:

> [9.1]. the existence of inequitable outcomes does not, of itself, indicate the Crown has breached the principles of te Tiriti o Waitangi/the Treaty of Waitangi (that would effectively require the Crown to guarantee outcomes – which is not possible); and
>
> [9.2]. it is difficult to assess and quantify the impact of the multiple (and complex) causes of negative education, health or housing outcomes, many of which the Crown has limited ability to control or influence;6 the Crown absolutely accepts its duty to take steps that are reasonable to address disparities in outcomes.

241. At para [25], the Crown stated that Te Tiriti o Waitangi/the Treaty of Waitangi does not impose on the Crown an absolute obligation to consult with Taihape Māori. However, the Crown is required to act fairly, reasonably, honourably and in good faith towards Taihape Māori, and to make informed decisions on matters affecting Māori interests. The Tribunal and Courts have recognised that the obligation to protect Te Reo Māori is a shared obligation between the Crown and Māori. A particularly vulnerable taonga may require extra vigilance.

242. The Crown failed at this from the time they evicted Ngāti Paki from Pokopoko, to the time of the native schools. We also make note that the Crown failed to protect the Reo as a Taonga and must understand that Te Reo me ona Tikana goes hand in hand.

Issue 7: Is current Crown policy towards the survival of Te Reo Māori adequate in schools within the Taihape inquiry district?

243. The Crown refers the Tribunal to paragraphs [51]–[57] of the Crown's closing submissions on Education and Social Issues. The Crown reiterates its submission that it is meeting its duty to actively protect te reo Māori by actively seeking to increase the availability of education in te reo Māori, including immersion education, across the country and in the inquiry district in particular – within the limits of maintaining appropriate quality of teaching.

244. As noted above, the Crown acknowledges that Māori language in education, including Māori medium schooling, provides significant opportunities to revitalise te reo Māori and support Māori educational wellbeing and achievement. The Crown also acknowledges education in the inquiry district has not met the needs of all Māori learners

245. We disagree with this statement. This may be significant for the Crown but not for Taihape Māori. What is the Crown's definition of significant opportunities to revitalise Te Reo Māori. The only way you can revitalise Te Reo Māori when it is dead is to make a community and whanau shift by providing and prioritising in partnership with Iwi and Hapū to establish for fill the institution gaps and provide a full learning strategy such as kohanga reo, kura Kaupapa Māori, wharekura and wananga this is what is significant opportunities look like for Taihape Māori to revitalise Te Reo Māori.

246. Acknowledging this, there are real difficulties, outside of the Crown's control, arising from the remoteness of the district and population demographics, which present challenges to providing high quality Māori language education. The Crown submits, however, that it is meeting its duty to actively protect te reo Māori by actively seeking to increase the availability of education in te reo Māori, including immersion, across the country and in the inquiry district in particular – within the limits of maintaining appropriate quality of teaching.

CULTURAL TAONGA

247. This section is in reply to the Crown closing submissions on Issue 19.[128]

248. Counsel adopt the generic submissions in reply in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki.

[128] Wai 2180, #3.3.94.

TE REO RANGATIRA

249. This section is in reply to the Crown closing submissions on Issue 20 of the Tribunal's Statement of Issues.

250. Counsel adopt the generic submissions in reply on Issue 21 in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki. The Claimants wish to make further comments.

Crown concessions

251. The Crown made concessions on many issues relating to Te Reo Māori which have been outlined in the generic submissions in reply.

252. The Claimants continue to say that many of their claims have not been adequately addressed. The claims made on behalf of Ngāti Hinemanu and Ngāti Paki are that the Crown, through the introduction of various policies and legislations, has:

    a. failed in their duty of good faith to actively protect te reo Māori and the unique reo o Ngāti Hinemanu and Ngāti Paki;[129]

    b. failed to provide for the distinctive educational needs of Ngāti Hinemanu and Ngāti Paki as a whole with particular consequences for the younger Ngāti Hinemanu and Ngāti Paki generation;[130] and

    c. failed to allow for the exercise of mana and tino rangatiratanga with respect to the establishment of appropriate institutions of learning including Kōhanga Reo; Kura Kaupapa; Wharekura and Whare Wānanga;[131]

[129] Wai 2180, #C6.
[130] Wai 2180, #K12 and Wai 2180, #C6.
[131] Wai 2180, #K12 at [41]-[43] and Wai 2180, #4.4.15 at 710.

d. failed to provide and implement current policies in education to adequately ensure the survival of Te Reo Māori and Te Reo o Ngāti Hinemanu and Ngāti Paki.[132]

Duty of Protection

253. In paragraphs [8]-[10], the Crown stated that it recognises te reo Māori as a taonga of Māori, including Taihape Māori, and accepts it has a duty to protect and sustain the language. The Crown has conceded it has breached the principles of te Tiriti o Waitangi/the Treaty of Waitangi in failing to actively protect te reo Māori (as outlined above) and accepts this includes dialects of Taihape Māori.[133]

254. However, the Crown's duty is not absolute and unqualified; the Crown is required to take such action as is reasonable in the prevailing circumstances as recognised in the *Broadcasting Assets* case.[134]

255. The Tribunal and Courts have recognised that the obligation to protect te reo Māori is a shared obligation between the Crown and Māori. A particularly vulnerable taonga may require extra vigilance.[135]

256. This has been a repeated Crown assertion. These assertions we say need to be measured against the evidence and policies and practices of the Crown that have prevailed since the Te Reo Māori claim was decided. The evidence is clear that NHNP face significant obstacles in overcoming the Crown resistance to providing appropriate resource to ensure the maintenance of their Reo which puts their identities also at risk of mono-culturalism and assimilation practices working to diminish the same.

257. The Crown understands the finding from the Broadcasting Assets case to mean that its duty to actively protect te reo Māori can be qualified. This understanding of the Broadcasting Assets case finding is valid.

[132] Wai 2180, #C6 and Wai 2180, #K11.
[133] At [8].
[134] At [9].
[135] At [10].

However, the finding can also be taken to mean that if the situation with regard to the condition of te reo Māori worsens, that is, if its use and retention plummets and extinction beckons, as it does now in the Taihape region, the Crown's duty to actively protect te reo Māori is less susceptible to being qualified.

258. Despite the recommendations of the Te Reo Māori Report and the recommendations made in the Wai 262 Report, the claimants say that the Crowns' protective duty to take such action as it is reasonable in the prevailing circumstances has not gone far enough. In applying the Broadcasting Assets test, Counsel argues that the lack of access to Te Reo Māori education mediums in Taihape means that for this region, the Crowns duty to Taihape Māori is wanting.

259. It is apparent that the Crown's failure to accept such a duty impedes on the likelihood of this mita o te reo being spoken further into the 21st century. We say that accepting such a duty will force the Crown to be become more innovative in the way that they apply revitalisation strategies as those in place have not worked for the people of the Taihape region.

Te Reo o Ngāti Hinemanu me Ngāti Paki

260. The Crown states at para [16], that the extent to which specific Crown legislation, policies and practices have negatively impacted te reo Māori for Taihape Māori has, however, only been addressed in detail in this inquiry in the education context. This is incorrect. There has been much evidence provided by uri of Ngāti Hinemanu me Ngāti Paki that have highlighted the decline in reo Māori speakers and the significant impact that has had on them as a hapū.

261. These impacts were significant for Ngāti Hinemanu and Ngāti Paki and continue to be felt today. There are very few members of Ngāti Hinemanu and Ngāti Paki today who have a strong language and cultural grounding. Many have committed themselves to reviving their language and culture. Yet as the evidence emphasises, the obstacles to

obtaining appropriate resources to facilitate this makes this admirable goal almost unattainable.

262. At para [15] of the Crown submissions, the Crown stated that the Crown has undertaken a number of initiatives to protect and revitalise Te Reo Māori. NHNP say that while there have been many initiatives to assist the wider Māori population to facilitate the survival of te reo Māori, the shift of the fundamental Westernised education system, which favours the imposition of monocultural policies and curriculums, within Ngāti Hinemanu and Ngāti Paki, to achieve this is a monumental task to say the least.

263. At para [17], the Crown also refers the Tribunal to its submissions on Education and Social Issues at paragraphs [50]–[57]. These submissions outline the progress that is underway in lifting te reo Māori provision in all educational settings, as well as the Ministry of Education's commitment to address the need for te reo Māori teachers in the inquiry district who are Taihape Māori.

264. We appreciate the Crown's acknowledgement of the establishment of Te Taura Whiri I te Reo Māori; a language revitalisation institution established through Crown intiatives in the later parts of the 20th century. We say, however, that since this institutions inception it has failed to provide the resources required for Taihape Māori to maintain their unique language.

265. With very few remaining speakers from the Taihape district, the langauge strategy needs to target areas of need; of which we say, Taihape is priority. If urgent action is not taken, Taihape could soon be bereft of any fluent speakers.

Education and Training Act

266. During the presentation of Crowns closing submissions on Issue 20, Dr Soutar asked Crown counsel, how far have the Crown come in regards to providing for Te Reo Māori in schools in this district and how long

will it take? The Crown could not answer. The Claimants say that this illustrates the lack of action to protect the language which has continued notwithstanding the Crown being made aware in these proceedings that the need to rectify the status quo is dire.

267. It also demonstrated an absence of understanding of some of the more recent amendments that have been made incorporated in the Education and Training Act 2020 and the onus that the Crown has placed on itself to Honour Te Tiriti in significant and specific ways in the addressing this obligation.

268. The Act is the biggest rewrite of education legislation in decades. Much of its content gives effect to the Government's plans to transform the education system, following the Kōrero Mātauranga | Education Conversation and the Tomorrow's Schools Taskforce report.

269. By s 4 of the new Education and Training Act a new purposes provision has been developed which incorporates Te Tiriti in a unique way which we set out in full below

S 4 Purpose of Act

The purpose of this Act is to establish and regulate an education system that—

(a) provides New Zealanders and those studying in New Zealand with the skills, knowledge, and capabilities that they need to fully participate in the labour market, society, and their communities; and
(b) supports their health, safety, and well-being; and
(c) assures the quality of the education provided and the institutions and educators that provide and support it; and
(d) honours Te Tiriti o Waitangi and supports Māori-Crown relationships.

270. The Act incorporates and replaces the Education Acts of 1964 and 1989, and also incorporates the Education (Pastoral Care) Amendment Act 2019 and the Education (Vocational Education and Training Reform) Amendment Act 2020.

271. To address education agencies' obligations under Te Tiriti o Waitangi, section 6 of the Act allows the Ministers of Education and Māori-Crown relations:Te Arawhiti, after consultation with Māori, to issue a statement specifying what education agencies must do to give effect to the public service objectives expectations that relate to Te Tiriti o Waitangi.

272. The intention of the statement is to provide greater specificity around what those education agencies must do to be Tiriti compliant.

273. By s 127 of the Act significant objectives for Board in Governing Schools are set out

Objectives of boards in governing schools

(1) A board's primary objectives in governing a school are to ensure that—

(a) every student at the school is able to attain their highest possible standard in educational achievement; and

(b) the school—

(i) is a physically and emotionally safe place for all students and staff; and

(ii) gives effect to relevant student rights set out in this Act, the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993; and

(iii) takes all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school; and

(c) the school is inclusive of, and caters for, students with differing needs; and

(d) the school gives effect to Te Tiriti o Waitangi, including by—

(i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and

(ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and

(iii) achieving equitable outcomes for Māori students.

(2) To meet the primary objectives, the board must—

(a) have particular regard to the statement of national education and learning priorities issued under section 5; and

(b) give effect to its obligations in relation to—

(i) any foundation curriculum statements, national curriculum statements, and national performance measures; and

(ii) teaching and learning programmes; and

(iii) monitoring and reporting students' progress; and

(c) perform its functions and exercise its powers in a way that is financially responsible; and

(d) if the school is a member of a community of learning that has a community of learning agreement under clause 2 of Schedule 5, comply with its obligations under the agreement; and

(e) comply with all of its other obligations under this or any other Act.

274. There are a number of important provisions with respect to total immersion schools. Subpart 6 of Part 3, which provides for the establishment and operation of Kura Kaupapa Māori, Te Aho Matua, and te kaitiaki o Te Aho Matua; and subpart 3 of Part 4, which provides for the establishment and operation of wānanga are particularly importanga.

275. Clause 4(b) and (d) of Schedule 13, provides that Te Pūkenga—New Zealand Institute of Skills and Technology must operate in a way that allows it to develop meaningful partnerships with Māori employers and communities and to reflect Māori-Crown partnerships to ensure that its governance, management, and operations give effect to Te Tiriti o Waitangi and to respond to the needs of, and improve outcomes for, Māori learners, whānau, hapū, and iwi.

276. Other provisions related to Te Tiriti o Waitangi in the context of the regulation of the education system include—

276.1 the definition of school community in section 10(1), which includes a Māori community associated with a school; and

276.2 section 17(2)(a), which provides that before the Minister may approve a licence for an early childhood education and care centre, the Minister must take into account the availability of services in the area with different offerings, for example, the provision of te reo Māori; and

276.3 sections 278(2)(a), 320(1)(c), 325(1) and (3), 326(2), and 363(3)(b), which provide for Māori contribution to decision making in tertiary education and vocational education and training; and

276.4 section 281(1)(b), which provides that councils of institutions have a duty, in the performance of their functions and the exercise of their powers, to acknowledge the principles of Te Tiriti o Waitangi; and

276.5 section 315(f), which provides that one of the functions of Te Pūkenga—New Zealand Institute of Skills and Technology is to improve outcomes for Māori learners and Māori communities in collaboration with Māori and iwi partners and interested persons or bodies; and

276.6 section 402, which provides that TEC comprises members appointed in accordance with section 28(1)(a) of the Crown Entities Act 2004 after consultation with the Minister for Māori Development; and

276.7 section 476(4)(b)(v), which provides that when considering whether to appoint a person as a member of the Teaching Council, the Minister must have regard to the collective skills, experience, and knowledge making up the overall composition of the Teaching Council, including understanding of the partnership principles of Te Tiriti o Waitangi; and

276.8 section 597(2)(d), which provides that a good employer in the education service is an employer who operates an employment policy containing provisions requiring recognition of the aims and aspirations of Māori, the employment requirements of Māori, and the need for greater involvement of Māori in the education service.

Ministry of Education recognises need to support Boards of Trustees

277. Legislative change alone will not achieve the desired improvements to ensure equitable outcomes for Māori students in the Taihape District. The Ministry will need to continue to support boards and their schools to implement these obligations through guidance and other assistance programmes. The Ministry will need to monitor boards' compliance with the new provisions, as they are given effect through planning and reporting requirements, and will continue to develop programmes and other supports to assist boards to do so. It is also anticipated that the

impact of the proposed changes will need to be monitored through ERO's evaluations and reports.

278. Many boards will be required to change their practices by working more closely with school communities, including Māori communities, so that schools' plans, policies and local curricula better reflect Māori culture, identity, and values and to give greater prominence to providing instruction in te reo Māori. Boards will also be explicitly required to give effect to te Tiriti through achieving equitable outcomes for Māori students. The enhanced Tiriti requirements will also need to be reflected in boards' planning and reporting.

279. It is clear from the evidence that the kinds of partnership relationships to achieve these objectives have not been developed in the Taihape region. The current Crown policies towards the survival of Te Reo Māori is inadequate in schools within the Taihape inquiry district and efforts for the dialect revitalisation are negligible. The Crown has failed to ensure that Ngāti Hinemanu and Ngāti Paki have the ability to improve and revitalise Te Reo Māori in their rohe and in doing so, has failed to actively protect Te Reo Māori within Taihape and their responses to the Tribunal even with the advances in the legislative reform discussed suggest that unless there are strong recommendations the status quo position will continue.

280. The focus of Crown policy and practice has been movement towards language learning and retention through writing; a method which was not used in traditional methods of transmission is also something that needs to be addressed in this new environment. The late Professor Te Wharehuia Milroy emphasised this process in his well-known whakatauāki:

> "Whakahokia mai te reo Māori mai I te mata o te pene ki te mata o te arero"
>
> Return the language from the tip of the pen to the tip of the tongue

281. There are many underlying messages within this proverbial saying but that which is apposite in the present circumstances is the importance of speaking the language and not leaving it for books on shelves. There are very few speakers left in the Taihape area and the people are bereft the environment to allow for speaking to happen. While the new legislation acknowledges the importance of wananga and other education training settings are available the plans being developed with Boards of Trustees is the need to recognise he oral transmission of language as a key process of language acquisition itself and resources need to be allocated accordingly.

282. We seek very strong recommendations in this respect accordingly.

WĀHI TAPU

283. This section is in reply to the Crown closing submissions on Issue 21.

284. Counsel adopt the generic submissions in reply on Issue 21 in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki.

285. Counsel submit that the Crown failed to uphold its duties and obligations under Te Tiriti o Waitangi, to the detriment and prejudice of Taihape Māori. In counsels' submission, there were many different avenues by way of policies, legislation, practices and omissions relating to land alienation, land management and use, resource management and environmental degradation, and riparian rights, policies and practices which caused prejudice to the claimants and as a result, the claimants have experience devastating effects including the denigration of kaitiakitanga over their own wāhi tapu and the continual desecration of wāhi tapu.

286. The claimants continue to say that the Crown has failed to adequately consult with them on decisions regarding their wāhi tapu,and taken into account any concerns raised by them.

Consultation

287. The generic submissions in reply on Issue 21(2) largely covers these matters.

288. The claimants say that Ngāti Hinemanu and Ngāti Paki have continuously been invisibilised by Crown processes through the enactment of legislation and policies and have suffered significant prejudice as a result. While some consultation with Māori may have been provided for, the Crown have overall failed to consult with Ngāti Hinemanu and Ngāti Paki on decisions regarding wāhi tapu and take into account any of their concerns.

CONCLUSION

289. It is counsel's submission that the Crown has failed to adequately address or respond to the issues raised in evidence or closing submissions put for and on behalf of NHNP. The Crown's failure to respond is extremely disappointing and is disrespectful to the claimants who have painstakingly documented their histories and experience due to Crown action or inaction.

Tēnei ka mihi ki ngā matarau I amoamohia nei I tēnei Kaupapa o tātou, koutou o tai pō, waihoki ki a tātou o tai awatea. Tātou I kawe nei I ngā manako, I ngā awhero kia tu Motuhake ai a Ngāti Hinemanu me Ngāti Paki I runga I tōna ano mana, tēnei ka mihi".

"Here I acknowledge the many faces who bore this purpose of ours, those who have gone to the night, also to those whom are with us today. All of us who carried the hopes and desires so that Ngāti Hinemanu and Ngāti Paki may stand on its own independent autonomy, I acknowledge you all".

DATED at Rotorua this 29th day of September 2021

Annette Sykes

Kalei Delamere-Ririnui

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