IN THE WAITANGI TRIBUNAL **WAI 2180**
TAIHAPE: RANGITĪKEI KI RANGIPŌ DISTRICT INQUIRY **WAI 1632**

IN THE MATTER OF	**the Treaty of Waitangi Act 1975**
AND	**Taihape: Rangitīkei ki Rangipō District Inquiry (WAI 2180)**
AND	**a claim by the late Hoani Hipango, the late Wilson Ropoama Smith and Hari Benevides (WAI 1632)**

CLOSING SUBMISSIONS IN REPLY

Dated 27 September 2021

Te Haa Legal

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"Ko te haramai he ngarara, kona niho he koura ko tona kai, he whenua "

Aperahama Taonui

The opening prophecy of Aperahama Taonui was a profound portent of things to come……. that continue to this day. The coming of Pakeha, his descriptive summation of their inherent characteristic nature and their avaricious appetite for land. "There comes a demon, with teeth like a crayfish, his diet land."

I learnt at the feet of my Koro and Kuia that although crayfish were lovely to eat, they were considered the lowest form; they scavenged on the seabed and defecated out their mouth. To be likened to koura was a great insult.

In 2021 and beyond we are still dealing with the koura as is evidenced by this my final presentation to the Waitangi Tribunal Hearing. On behalf of my Tipuna, my mother and sister Manurereao Hipango Allen, co claimants my late brothers Hoani Wiremu Hipango and Wilson Ropoama Graham Smith, our descendants and our Whanau Pohe, I remind you we have never forgotten, we have never left and will never give up the fight, we reign…..we endure….

- *Hari Benevides*

MAY IT PLEASE THE TRIBUNAL

Introduction

1. This are the Closing Submissions in Reply on behalf of the late **Hoani Hipango, the late Wilson Ropoama Smith and Hari Benevides** (Wai 1632) ("the Claimants").

2. By way of background to the Wai 1632 claim, we refer to the Closing Submissions filed on behalf of Wai 1632 dated 20 October 2020.[1]

3. These Closing Submissions in reply support and adopt the generic closing submissions in reply.

4. These submissions will respond to a number of matters addressed in the Crown closing submissions where issues related to the Claimants are identified and specifically addressed. These are:

    a) The Kōkako and Turangaarere hui;

    b) Public Works Takings: Maungakaretu Scenic Reserve;

    c) Public Works Takings: North Island Main Trunk Railway, Raketapauma 2B1; and

    d) Rating.

5. Concessions in relation to some of these issues are acknowledged and appreciated. However, there are still some matters that require a response, given the general nature of many of the concessions.

6. Where an issue is not responded to in these submissions, this should not be taken as acceptance of the Crown's view of the issue.

The Kōkako and Turangaarere Hui: Expressions of Tino Rangatiratanga

7. The Crown refers to the Kōkako and Turangaarere hui in its submissions on Issue 2. The hui are accepted and acknowledged by the Crown as being expressions of tino rangatiratanga by Taihape Māori, including Te Oti Pohe (I). However, the Crown appears to make no concessions in relation to its denial of Taihape Māori Rangatira's ability to express their tino

[1] Wai 2180, #3.3.0059

rangatiratanga. Concessions are made in regards to the Crown's failure to protect tribal structures from being undermined by mechanisms such as individualisation of title.[2]

8. In relation to the Kōkako hui, the issue raised by the Claimants is that Donald McLean would not acknowledge the chiefly status of Te Oti Pohe (I) and his ownership over the land which the Crown were seeking to acquire, nor would he uphold promises made to rangatira concerning repairs of land boundaries.[3] The Claimants submitted that McLeans actions amounted to the Crown actively undermining the tino rangatiratanga of Te Oti Pohe (I). The Crown have focused their account of the Kōkako hui on its purpose of resolving inter-tribal land disputes. The Crown have relegated the second purpose, being the expression of the tino rangatiratanga of Te Oti Pohe (I) by stopping sales of land , to a background issue along with land purchasing and political engagement with the Crown. The Crown acknowledges that the Kōkako hui was a demonstration of tino rangatiratanga of Taihape Māori but does little more than give them a pat on the head for the attempt.

9. McLeans refusal to acknowledge the status of rangatira at the hui is not acknowledged by the Crown in its submissions. The Claimants see this as an egregious omission. There is overwhelming evidence that Donald McLean considered the ways of Māori to be primitive and that they would benefit from the influence of British civilisation. McLean took a paternalistic view of Taihape Māori which undoubtedly reflected the Governments view of the time.

10. Not only Mclean, but also Rev Taylor sought to diminish the status of Te Oti Pohe (I) because he demonstrated his mana in being able to call such a large hui and assemble the people who came. They saw that as a threat. Kōkako was Te Oti Pohe's own marae.

11. The Turangaarere hui of 1871 which followed Kōkako is significant for the Claimants because it was held on Raketapauma 2B1C. It was also a demonstration of tino rangatiratanga by Taihape Māori, which the Crown acknowledges. The purpose of the hui was the resolution of inter-tribal boundary issues and to stop further sales of land, much like Kōkako. Again Te Oti Pohe (I) was particularly opposed to the selling of land to the Crown, and again Crown officials used underhanded tactics to actively undermine Te Oti Pohe (I)'s land from being sold, and, again, they did not recognise his chiefly status and authority. The Crown makes no mention of its failure to respect the tino rangatiratanga of

[2] Wai 2180, #3.3.90, p4, paragraph 7
[3] Wai 2180, #4.1.8, page 242-248

Te Oti Pohe (I), and it is submitted that a concession of this nature is required for both Kōkako and Turangaarere.

Public Works Takings: General

12. The Crown makes a number of concessions in relation to the Maungakaretu Scenic Reserves taking in its submissions on Issue 13.

13. The Claimants submission on the Maungakaretu Scenic Reserves was that there were serious deficiencies in the acquisitions and compensation process. The Claimants appreciate the Crown's admission that the acquisition and compensation process was not compliant with the Treaty/Te Tiriti. However, this does not acknowledge the impact that would have had on the Claimants, as owners of Raketapauma 2B1C. The fact that the owners of Raketapauma 2B1C were not notified of the taking where other owners were put them at a significant disadvantage economically and the Crown does not appear to appreciate the full impact that this omission had had on the Claimants.

14. The reasoning for the taking of the land for the reserve is questioned by the Claimants. The Claimants say that the Crown sought the land so it could be jealously conserved and protected for use of the Crown rather than Taihape Māori. The Claimants see this as a form of Crown landbanking, where the land is taken and kept for Crown use only.

15. It is the view of the Claimants that the language used for the taking of the Maungakaretu Reserve in 1911 disguised what the true purpose of the acquisition was. The Crown likely hoped that tangata whenua may depart the land as part of the urban drift, or worse be forced to leave because they were unable to sustain it themselves, so they felt compelled to leave.

Public Works Takings: North Island Main Trunk Railway

16. The Claimants gave evidence and made submissions on the taking of Raketapauma 2B1 in 1905. The land was supposed to be used for the railway, but the evidence suggests that it was not strictly required for the operation of the railway. This is consistent with the Claimants' position, and it is acknowledged by the Crown in its submissions on Issue 14.

17. The Crown and the Claimants appear to agree that Whatarangi Pohe in 1935 requested that the land be returned to him as his deceased father had lived on the land and it was still used.

18. His father Ropoama was not notified of the Crown's intention to take the land. Whatarangi Pohe visited the Prime Minister George Forbes seeking return of the land. Forbes advised the Railways Department to do something about it. The Railway Department stated that the land was not required for railways purposes. But it was not returned, on the recommendation of the land officer. The letter stated that they did not want to open it up to other "natives" to lay claims. Instead, a peppercorn lease was offered.

19. The Crown has not responded as to whether the land officer was justified in his refusal to return the land to Ropoama Pohe. The Claimants submit that the land should have been returned at that point, once the Crown was put on notice of the Claimants ancestral connection to the land and the fact that no notice was given of the taking. Again, it appears that the Crown have not acknowledged the impact that takings such as this have had on the Claimants.

20. The Claimants gave evidence that in the 1990s they sought to purchase the land back from New Zealand Railways as it was clearly not being used for the purpose it was taken for. Despite this being nearly 60 years since the Crown was put on notice of the Claimants ancestral connection to the land, the offer to purchase was refused. New Zealand Railways still considered that the land was required for the railway despite recommendations to the contrary dating all the way back to 1935.

21. The Crown say at paragraph 38 of their submissions on Issue 14 that:

> *"Whether these particular areas were reasonably required for the purposes of the railway when acquired is a real question on the available evidence. The Crown would welcome the Tribunal's guidance and findings on these matters."*

22. The Claimants disagree. The land officer should have acted on the advice of the District Engineer. The fact that there are questions over whether the land was required for railway purposes should demonstrate that it Is surplus. In any case the Crown have acknowledged that it was not strictly used for railway purposes.

23. The Claimants urge the Tribunal to make findings that the clearly the land was not required for the railway on the grounds that it has never been used for the railway and their tupuna Ropoama Pohe had lived on his life on that very piece of land.

24. At paragraphs 125 to 130 of the closing submissions for Wai 1632, the Claimants made submissions on the small discrete remedies process that they have been seeking since well

before the Wai 903 inquiry. The purpose of the application, made during the Wai 903 inquiry, was to seek the return of Raketapauma 2B1C.

25. The Wai 903 Tribunal panel recommended in their report that Raketapauma 2B1C be returned to the Claimants. The Crown have not acted on this recommendation and maintained that they do not control the land. The land is under the governance of New Zealand Railways. As a State-owned enterprise, the Government has significant control over the operations of New Zealand Railways Corporation. It is well within the power of the Crown to ensure that the unused Raketapauma 2B1C land be returned to the Claimants. As outlined above there is ample evidence to suggest that the land was not required for railway purposes and the Claimants have already demonstrated their connection to the land through over 150 years of occupancy. Deficiencies in the acquisition process have been acknowledged. The Claimants see no reason why the land cannot now be returned to their ownership and respectfully urge the Tribunal to make a recommendation to this effect.

Rating

26. In their submissions on Issue 10, the Crown responded to the Claimants' submissions on the impact of rating legislation. Some concessions are made concerning general rating practices and the contribution this would have had on the significant loss of land suffered by Taihape Māori, but then submits that the legal mechanisms used to recover rates were justified and not in breach of the Treaty / Te Tiriti, also referring to lack of available evidence to establish this.[4]

27. The blanket rating scheme used to recover rates from Taihape Māori was not an appropriate mechanism and the fact that it resulted in so much land being lost from Taihape Māori should demonstrate a clear Treaty breach. Charging orders imposed over the Claimants land also resulted in loss of the land because it was unable to be properly sustained. Referring to the example of Ropoama Pohe and Ngaruroro Tihema asking for more time to pay the rates, the Crown forced them into a position where the land had to be leased for 5 years just to pay the rates. Court fees etc were also added on top of the charging order. This was time and effort Ropoama Pohe could have used to develop and sustain his land for the benefit of future generations. Funding also should have been available for the development of the land. It is unjustifiable that the Crown would impose such a significant burden on Taihape Māori for the recovery of rates without providing

[4] Wai 2180, #3.3.80, page 23, paragraphs 65 - 67

mechanisms for the owners to actually benefit from the land that they were forced to pay rates for.

Conclusion

28. The Claimants appreciate the various acknowledgements and concessions made by the Crown in their closing submissions in relation to issues raised by Wai 1632. As noted above many of these concessions do not acknowledge the immense impact that the large-scale land loss has had on the Claimants and the concessions often do not acknowledge the clear breaches of the Treaty / Te Tiriti. We refer to the Crown submissions on Rating as an example of its reluctance to acknowledge a Treaty breach. The Claimants are concerned that the Crown put its economic objectives over its obligation to protect Taihape Māori from prejudicial large-scale land loss. The Crown appears aware of the land loss suffered but continues to justify some of the mechanisms used to acquire the land in the Taihape district.

29. It appears to take the position in many instances that it was inevitable that Taihape Māori and the Claimants were going to suffer this land loss as a result of Crown action, as the mechanisms used to acquire the land were the only pragmatic way to deal with the various issues. In this regard the Crown remains in breach of its obligations to protect Taihape Māori under the Treaty / Te Tiriti. For the Claimants, this is particularly apparent in the Crown reluctance to return Raketapauma 2B1C as set out earlier in these submissions.

30. Finally, the Claimants refer to their submissions on the Discrete Remedies Process set out in the Wai 1632 closing submissions at paragraphs 125 – 130. Counsel note that no response was given by the Crown regarding the Claimants options in relation to their desire to pursue a discrete remedies process. The Claimants look to the Tribunal to provide findings and recommendations in this regard.

DATED this 27th day of September 2021

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