**BEFORE THE WAITANGI TRIBUNAL WAI 1040**

**TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI WAI 53**

**IN THE MATTER OF** section 6 of the Treaty of Waitangi Act 1975

**AND**

**IN THE MATTER OF** the Te Paparahi o Te Raki Inquiry - Wai 1040

**AND**

**IN THE MATTER OF** a claim on behalf of the Pārahirahi C1 Trust and Ngā Hapū o Ngāwhā

**OPENING SUBMISSIONS ON BEHALF OF WAI 53**

**Dated 4 November 2015**

logo_little

PO Box 1654

Telephone: 04 495 9999

Facsimile: 04 495 9990

Counsel: P T Walker

**WELLINGTON**

**MAY IT PLEASE THE TRIBUNAL**

**Introduction**

1. These opening submissions are filed on behalf of the trustees of Pārahirahi C1 (Ngāwhā Springs) Māori Reservation Trust (“**the Trust**”) in relation to the Wai 53 claim.
2. The Trust acknowledges the extensive evidence and submissions already filed in this Inquiry on behalf of the hapū and claimants within the Waimate Taiamai ki Kaikohe Taiwhenua. The Trust does not seek to replicate this material in these submissions.
3. The purpose of these submissions therefore is to briefly introduce the Trust, the Wai 53 claim and claim issues, and to provide a framework for the claim issues raised by the evidence to be presented on the Trust’s behalf.

**Background**

1. The Wai 53 claim was originally filed in 1989 on behalf of the Trust and Ngā Hapū o Ngāwhā by Mr Wiremu Tairua, a former chairperson of the Trust.
2. In its amended form, it was brought by the trustees of Pārahirahi C1 Māori Reservation Trust for those whānau and hapū with an interest in the Ngāwhā geothermal resource. More specifically it was brought for and on behalf of some ten hapū of the Ngāpuhi iwi. These hapū are Ngāti Hine, Te Hikutu, Te Uri Taniwha, Te Māhurehure, Te Uriohua, Ngāti Rehia, Ngai Tawake, Ngāti Hau, Ngāti Rangi and Ngāti Tautahi
3. Aspects of the Wai 53 claim, together with a number of other related claims, were initially heard and reported on under urgency by the Waitangi Tribunal in the *Ngāwhā Geothermal Resource Report 1993* (“**Ngāwhā Report**”).
4. Wai 53 was consolidated in the list of claims to be heard in the Te Paparahi o Te Raki Inquiry in 2011.[[1]](#footnote-1)
5. By memorandum dated 21 December 2012 the Trust amended the Wai 53 claim by adding the then-chairperson of the Trust, Mr Renata Tane, as the named claimant for Wai 53 (Wai 53, doc. #1.1(a)). This amendment was confirmed by memorandum-directions of the Deputy Chairperson dated 21 May 2013 (Wai 53, doc. #2.4).

**Pārahirahi C1 Trust**

1. The Trust is the owner of the Pārahirahi C1 block, a one-acre area of land which contains part of the Ngāwhā Springs. The beneficiaries of the Trust are the descendants of the 11 original owners of the Pārahirahi C1 block.
2. The Trust is kaitiaki of the Ngāwhā Springs, and the significance of this role will be explained further in the Trust’s evidence. This role has included continued active participation in Resource Management Act 1991 processes, including resource consent processes.

**Claim Issues**

1. The Wai 53 claim is concerned with the recognition of rangatiratanga, mana and kaitiakitanga of the Trust and hapū over ancestral resources and taonga which the Crown has either acquired or assumed control of in breach of te Tiriti o Waitangi. These lands and resources include the original 5,097 acre Pārahirahi block, the springs at Ngāwhā and the underlying geothermal resource in the Ngāwhā geothermal field, which is an area of some 25 to 50 square kilometres.[[2]](#footnote-2)
2. As Mr Tane will describe, the Ngāwhā springs sit roughly in the centre of the east and west coast of Te Tai Tokerau, both in a genealogical and geographic sense.
3. Crucially however, despite its focus on the Ngāwhā area, the Wai 53 claim must be considered in the context of the Crown’s interaction with ngā hapū o Ngāpuhi throughout the 19th century, and especially in light of the Tribunal’s recent Stage One finding that the rangatira who signed Te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain.[[3]](#footnote-3) This context is essential to understanding the primary “pou” of this claim, which is that ngā hapū o Ngāwhā have never ceded their rangatiratanga in respect of their lands and resources.

**Evidence**

1. Today, and notwithstanding the Tribunal’s 1993 *Ngāwhā Geothermal Resource Report*, the Trust’s evidence will focus on three areas of Crown action or omission:
   1. the Crown’s failure to honour its guarantee of tino rangatiratanga in respect of the lands and resources of ngā hapū o Ngāwhā, including its failure to:
      1. appropriately recognise and provide for the rangatiratanga, mana and kaitiakitanga of the hapū;
      2. provide for collective interests in the land tenure system it introduced;
      3. provide appropriately for hapū rights and roles in respect of the geothermal resource;
      4. ensure that Crown actions were consistent with the terms and principles of the Treaty;
      5. ensure that the hapū retained sufficient lands and resources for their own sustenance, prosperity and development.
   2. the Crown’s large scale acquisition of almost all of the original 5,097 acre Pārahirahi block in breach of the principles of the Treaty of Waitangi, including through:
      1. its undermining of hapū interests through the purchase of undivided share interests;
      2. reliance on a deed of sale in 1894 which was, by all accounts, shonky and a “legal nullity”[[4]](#footnote-4), and excessive public works takings in the 20th century;
      3. large acquisitions of land through public works legislation, such as an area of 134 acres for “scientific and industrial research purposes” as recently as 1981;
   3. the prejudicial effects of the Crown’s inaction in respect of the recommendations contained in the *Ngāwhā Geothermal Resources Report* in 1993, including the return of the four-acre Pārahirahi C block and the inadequacies of the Resource Management Act 1991, which continues to fail to recognise the kaitiakitanga of the Trust and the hapū.
2. The following witnesses will present evidence on behalf of the Trust and the Wai 53 claim:
   1. Nicole Butler (#T14 and #T14(a)); and
   2. Paratene Hirini Tane (#T3).
3. Ms Butler’s evidence will address all three of the Trust’s major claim issues. She will outline the Trust’s position on the alienation of the Pārahirahi lands, and then focus on the Crown’s failure to address the recommendations of the Tribunal in 1993. In particular, her evidence will discuss how the four acres that is a recreation reserve remains in Crown ownership, despite the Trust’s efforts, and that the Trust continues to be marginalised during Resource Management Act 1991 processes.
4. Mr Tane’s evidence will examine the alienation of the Pārahirahi lands and the impact of this alienation on claims in respect of the geothermal resources of Ngāwhā. His evidence is that the contemporary position must be examined in light of the Crown’s untoward conduct in acquiring the bulk of the Pārahirahi lands in 1894, as well as later acquisitions such as those undertaken pursuant to public works legislation.
5. Both witnesses for the Trust will address the critical interplay between rangatiratanga, mana and kaitiakitanga, and the Crown’s failure to appropriately provide for the same, whether through its land tenure system or through its natural resource management regimes.

**Ngāwhā Geothermal Resources Report (1993)**

1. Ms Butler’s evidence will describe how the *Ngāwhā Geothermal Resources* claim was heard under urgency in 1993. At the time of the urgent hearing in 1993, the claimants were concerned that resource consents were being sought under the Resource Management Act 1991 to exploit the Ngawha geothermal resource for the purpose of electricity generation. The claimants were opposed to such a development and the Tribunal at that time agreed to the request for an urgent hearing.
2. At the hearing, the claimants argued that the original acquisition of the entire Pārahirahi block and the hot springs situated on the four acres of Pārahirahi C by the Crown were in breach of the principles of the Treaty of Waitangi. The claimants told the Tribunal that the Ngāwhā geothermal resource is a taonga and rejected the notion that the resource was in some way severable or divisible.

*Summary of Findings and Recommendations*

1. In the resulting *Ngāwhā Geothermal Resources Report*, the Waitangi Tribunal made a number of findings and recommendations, a summary of which is **attached** as **Appendix A**.
2. Significantly for the Wai 53 claimants, the Tribunal’s findings and recommendations did not address one of the primary Wai 53 claim issues: the manner in which the original 5,097 acre Pārahirahi block was acquired by the Crown. This is an essential component of the Wai 53 claim which remains to be addressed in this Inquiry.

**Jurisdiction and Scope – Ngāwhā Geothermal Resource Issues**

1. Counsel understands that the Crown has raised the issue of jurisdiction and how the Tribunal proposes to deal with Ngāwhā geothermal issues in this Inquiry, in light of the 1993 Ngāwhā Report.[[5]](#footnote-5) Due to the significance of this issue Counsel will liaise with other claimant counsel within the Waimate ki Taiamai Taiwhenua to provide joint submissions on this issue.
2. For present purposes, it is enough to note that the Trust considers that this Inquiry provides the only opportunity for the Tribunal to consider the Crown’s assumption of control of the Ngāwhā geothermal resource in its essential context, which is the enduring opposition of the hapū of Ngāwhā to Crown assumptions of control of land and resources, from 1840 to the present day. This is addressed in detail in the Trust’s evidence.

**Conclusion**

1. The Trust does not propose at this stage to make lengthy submissions on matters which are best addressed through closing submissions, once all relevant evidence has been produced in this Inquiry. However, the following remarks are appropriate at this early stage.
2. The Crown’s commitment and undertaking to ngā hapū o Ngāwhā appears in Te Tiriti. By it, the Crown, guaranteed to the hapū their tino rangatiratanga. As this Tribunal has already found, it is inconceivable that those rangatira who signed Te Tiriti were giving up their mana – rather, they were exercising it.
3. Te Tiriti remains a living document to regulate the relationship between the parties. It was not to be cast aside, or modified at a later time, according to the wishes of only one of the parties to it. It assured ngā hapū o Ngāwhā that their laws and customs would survive and develop, both in the dealings they had with each other and with other iwi, and in their dealings with the Crown, as taonga in their own right, and for management of their other taonga and property.
4. Instead, the Trust’s evidence will demonstrate that the Crown’s actions and omissions have left the Trust and ngā hapū o Ngāwhā in a position where their mana motuhake, tino rangatiratanga and kaitiakitanga remain under attack.
5. The Trust urges the Tribunal to look closely at the Crown’s conduct in respect of the issues raised by the Wai 53 claim, and as described in the evidence before this Inquiry, and to make findings that this conduct breached the principles of te Tiriti o Waitangi.

**DATED** at Kerikeri this 4th day of November 2015

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**P T Walker**

**Counsel for Parahirahi C1**

**Maori Reservation Trust**

**TO:** The Registrar, Waitangi Tribunal, Wellington

**AND TO:** All Counsel - Wai 1040 Te Paparahi o Te Raki Inquiry District

1. Wai 1040, #2.5.87, Appendix 1. [↑](#footnote-ref-1)
2. A map of this area is included in Mr Paratene Tane’s evidence (Wai 1040, #T3). [↑](#footnote-ref-2)
3. Stage One Report, Wai 1040, part 10.5. [↑](#footnote-ref-3)
4. See Ngāwhā Report, Waitangi Tribunal 1993, p.62. [↑](#footnote-ref-4)
5. At the beginning of the Waimate Taiamai hearing week at Kerikeri on Monday 2 November 2015. [↑](#footnote-ref-5)