

**IN THE WAITANGI TRIBUNAL**  
**OF NEW ZEALAND**

**WAI 2003**

**IN THE MATTER OF**

the Treaty of Waitangi Act  
1975

**AND**

**IN THE MATTER OF**

Te Paparahi o Te Raki  
District Inquiry

**AND**

**IN THE MATTER OF**

a claim by Cheryl Turner,  
John Klaricich, Harerei  
Toia (deceased), Ellen  
Naera, Fred Toi, Warren  
Moetara and Hone  
Tiamona on behalf of  
Ngati Kororkoro Ngati  
Wharara and Te Pouka  
Hapu

---

**AMENDED JOINT BRIEF OF EVIDENCE OF ELLEN NAERA, PEREWHANUI  
TOI AND GLORIA NAERA**

Dated this 3 April 2014

---

---

**Instructing Solicitor:**

Tamatekapua Law  
PO Box 75-015  
Manurewa  
AUCKLAND 2105  
Tel (09) 268 1840  
Fax(09) 268 1850

---

**Counsel Acting:**

Katharine Taurau  
4 Pa Road  
Kerikeri 0230  
NORTHLAND  
T: 021 63 60 64  
E: [kath.taurau@xtra.co.nz](mailto:kath.taurau@xtra.co.nz)

## **Introduction**

1. We, Ellen Naera, Perewhanui Toi and Gloria Naera provide this joint brief on behalf of our whanau and the people of Nga Hapu o Te Wahapu o Hokianga Nui a Kupe.
2. Perewhanui and I are children of Piwai and Kare Toi, we were raised on our ancestral land at Kokohuia and at Waiarohia along with our siblings Frazer, Wiritai, Ratapu, and Kathleen and our mother's brother Riapo and her half sister, Amelia. Mum is from Whirinaki and we still farm some of her lands.
3. In this brief we address the following issues:
  - a. the loss of autonomy and control over our ancestral waters;
  - b. the effects of the provision of the Opononi/ Omapere, public water supply and wastewater wetlands on our whanau land and ancestral waters at Waiarohia, including ongoing erosion of our lands there;
  - c. proposals to develop a landfill on the banks of Waiarohia awa and our lands.

## **Ancestral Waters**

4. As a child I remember roaming all over our farm where Dad milked about 30 cows and he and mum worked hard. As I grew older I hunted over the hills and valleys, I was always aware that our water was piped down from the hills above the valley where the old people had constructed a dam to provide a water supply for farming. I understand that this dam was constructed prior to the second world war. My father was member of the home guard and they built underground huts as a precaution in case of a Japanese invasion, those huts are adjacent to the dam.
5. The dam is built on the steep part of the ridge on a precipice, it is constructed of concrete, about 4 to 5 feet high and no more than about 10 to 12 feet long. The water just flows over the top. The dam catches the natural fall of the water, and it must have been quite a feat for our tupuna to construct as they would have had to carry everything into a steep and remote area right up in the bush. The water is from a spring and is pristine, beautiful to drink.
6. The water from the dam travels a few kilometres, in the old days it supplied our Marae, farms, the school, and the Opononi and Omapere townships, it was controlled by our

people who knew the source and how to use and conserve it. But now that right has been taken away. A resource consent administered by the council is in place and we are required to monitor the water use by the installation of metres. Kokohuia Marae is the owner of the pipes and infrastructure but a separate water committee organises the water supply. We receive money from users for maintenance of the pipes, and pay rates of about \$100 per year for the easement for our water line. Although the water committee are supposed to have a member of our Marae as the chair person, and are in charge of the water supply, I believe that the existing water line may be overloaded as it is difficult to know exactly what the usage is. We at the Marae haven't received that information.

7. The Marae had a new line installed for direct uninterrupted flow of water to our tanks and the old line was to continue to supply everyone else, but we suspect people have cut into or connected to our Marae line. Council managed to have monitoring put in place when 10 or 15 years ago we at the bowling club sought an easement for a water line from the Marae. In the end we didn't put the bowling club on our water supply, but council took the opportunity to require that our water be metered.
8. Now our ancestral waters are supplied to various property owners, almost all of whom are not members of our hapu. During the 1960's and 1970's our parents and other whanau from Kokohuia worked hard to establish our Marae at Kokohuia, which is a site with an ancient history, we knew all of the families that used to live at Kokohuia, but today hardly any of our whanau can live on their lands.
9. We are concerned about the future use of our water and we are very aware of the poor manner in which the Council maintains the lower dam, where there is a build up of gravel and debris behind the dam, limiting its capacity. Flooding events are quite catastrophic for our whanau land at Waiarohia. We also have to put up with foul odours from the waste water treatment ponds.

*Erosion of land at Waiarohia*

10. Today, we retain our whanau lands at Waiarohia and during the construction of a site for an outdoor bowling green, in anticipation of a bowling club there, earth and dirt was dumped and pushed over the edges of the awa towards our house. This dumping of earth and dirt created a potbelly effect, which pushes the water all the way around to the

culverts which were already in place under the road to take the water from the awa out onto the beach. The water flow toward the culvert would suggest that this potbelly effect that they have caused has totally changed the course of our awa. This has resulted in severe erosion of our land and caused significant loss of land over the years. There has also been an increase in the risk of flooding, when from time to time the culvert backflows onto our property.

11. Over the last 25 years or so about 8 or 9 metres of our land has eroded by floods and the flow of the river. We have told the Council about this erosion and they met us and promised to place boulders along the banks to help prevent ongoing erosion. They even told us there was a budget for that to be done, but later we were told the money was used somewhere else and Council has done nothing.
12. Eventually we in the community chose a better site for the bowling club, a bit further back from the awa, this is the site of the present day bowling club. Time and time again council have taken no notice of our concerns resulting in a detriment to us. For example when I heard that land at Taumatawiwi was being subdivided for housing development, a place I know is a swamp that drains along Tanihua and in to where our bowling club is located, I thought the proposal was totally flawed. Water still comes out of the ground there, it is not really suitable for housing.
13. Along with losing our lands and control over our ancestral waters and waterways, we have also lost our community. From the time I was growing up to now, there are very few of our whanau able to live on our lands, our Marae and resources suffer when we are not there ensuring their wellbeing. These are the issues we wish to bring before the Tribunal, we seek the restoration of our autonomy and recognition of our customary rights to our taonga katoa.
14. We also wanted to let the Tribunal know that we remain frustrated with much of the council decision making within our area, where our views are just ignored. For many years our old people developed places for our use, for example, the original dam built by our old people, our parents maintained that resource and constructed our Marae, they understood our waterways and places where development should occur, but we have not had a say in the development of our area, this must change and we seek recommendations from the Tribunal that help to effect that change.

## **Flooding**

15. Our whanau lands at the mouth of the Waiarohia awa close to the harbour coast, was always a holiday place for us growing up. In the summertime we would move down from our farm in the valley above Waiarohia, to spend time swimming, playing and roaming over the hills with all of our cousins there. At that time the awa was deep and clear and never ran dry, it was filled with whitebait, eels, freshwater crayfish, and cockabullies. It was quite narrow and totally different to what is there now. Our father was a competent diver, hunter and fisherman and we had large garden, which all helped to supplement our food sources, we were never without.
16. We have read the reference to the letters of our father and Bill Te Whata and Mare Riki sent to the Maori Affairs in the 1950's where he expresses great frustration at the lack of a road to the marae and to the farms at Kokohuia.<sup>1</sup> While I don't know the details as he and mum never discussed these things with us children, I wanted to read it out because it helps explain why he and mum left the farm. His first letter in 1951 states:

*“Would you please help us, our need is great. We have gone without a road for 20 years, but we cannot do it much longer. We cannot reap the full benefit of our marae without the connecting link of a road.”*

And 5 years later in 1956 dad and the others write:

*In a previous letter ... you promised us your full and fair consideration. If you had fulfilled that promise we would now have had our road. You are our representative in Parliament and we, in this remote district, rely implicitly on you and your officers, in such matters as this. For 23 years this project has been shelved by your department, and during those 23 years we have had to sledge our cream 2 miles across hills, watch our children arrive home exhausted from their long trek after school and deny ourselves, our wives and families the luxury of a social life, because of the impossibility of access. In times of sickness or accident, the trip to the road has been a nightmare to the patient. Every bag of manure, every roll of wire, everything that we have needed to improve our land, has been laboriously packed in by horse and sledge. At first the task was lighter, for we dreamed of the road soon to come. But 23 years is a long time. We are no longer young and optimistic, but prematurely aged and disillusioned. How can we ask our children to take over our farms and suffer in the same way?”*

---

<sup>1</sup> McBurney, “Northland: Public Works & Other Takings c. 1871-1993” Wai 1040, #A13, p111

17. In the early 1960's mum and dad sold the farm.
18. They kept our homestead, which they had built and when it was time to move they dismantled it and brought the whole house down to Waiarohia to be reconstructed. The house is still there and used by our whanau today.
19. One of the reasons I wanted to be part of this claim is that I had heard mum's call when she didn't want a rubbish tip by our lands and I thought about that and all of the other things our parents and old people protested about when the Council didn't hear us, including over the building of the dam the use of the banks of the river for waste water treatment ponds.
20. Because of the dam, mum was very worried about flooding and getting swept away in the floods, many of which she had seen during her lifetime. The changes to the awa, the dam, these all worried her. In the 1990's she nearly was swept away, the flooding was so quick she had to be airlifted out of her home with the water sweeping right through her house, and my brother's next door and over road onto the beach.
21. This flooding also contributed to significant erosion, a large area of our land has been lost. After mum had died we spent some money putting in cambion baskets along a part of the bank, but we are still losing ground. We want to reclaim some of our land around mum's house or change the course of the river to stop the erosion.

### **Proposed landfill**

22. I spent a lot of time with my grandmother as a teenager and when she asked me to help her deal with Council proposals to locate a rubbish tip on our land and very close to our Marae at Kokohuia, I was keen to do that. I did some research and listened to what my grandmother wanted to say in opposition to the proposals and then helped her write up a submission. My grandmother didn't want council dumping town rubbish including all sorts of household waste onto our whenua. The proposal was for the rubbish to be buried, but for some time it would just sit on the land. My grandmother was completely opposed to this plan which would have meant vermin, rats and dogs, and all sorts would have been digging up rubbish and making a huge mess not to mention the smell and flies that would have been part of the site.

23. We and others opposed any sort of rubbish tip proposal on our lands and we went to Rawene to the Council hearing to present our submission. The council had suggested that after the land fill was complete, a sports ground could be developed, but no one wanted sports ground on a land fill.
24. Although we were successful in stopping the landfill, there was a trade off – which is the waste transfer station located on the banks of our awa at Waiarohia. We don't agree with it being there, we don't know what is being dumped there and Council has not provided any protection for the awa, so any liquids that are spilled, or when it rains, that material gets swept into the awa. My grandmother didn't want that there either but as I say that was a compromise from having a huge landfill on our lands. <sup>2</sup>
25. I know my grandmother would have wanted us to remind the Tribunal of this issue and keep fighting to ensure our lands are not polluted any more than they have already been.

Ellen Naera

Perewhanau Toi

Gloria Naera

---

<sup>2</sup> Stirling, "Eating Away at the People, Eating Away at the Land: Local Government, Rates and Moari in Northland, Wai 1040, #A15, p894,895."